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I. LAND AND PEOPLE

1. Land: Chile lies on the south-western edge of South America, occupying a long, narrow strip of territory extending some 4,200 kilometres from north to south and averaging 250 kilometres wide. About 3,000 kilometres off its coast, in the Pacific Ocean, are Easter Island and the Juan Fernández archipelago. Chile has a total area of 2,006,626 square kilometres (756,096 square kilometres of continental territory and 1,250,000 square kilometres of Antarctic territory).

2. People:

Total population

	Total	Male	Female
1992 census	13,348,401	6,553,254	6,795,147
1998	14,821,714	7,336,118	7,485,596

Urban population

	Total	Male	Female
1992 census	11,140,405	5,364,760	5,775,645
1998	12,623,059	6,153,975	6,469,084

Rural population

	Total	Male	Female
1992 census	2,207,996	1,188,494	1,019,502
1998	2,198,655	1,182,143	1,016,512

Population density

1992 census	17.6 inhabitants per square kilometre
1998	19.6 " " " "

Population growth rate

1982-1992	1.6 inhabitants per thousand
1997-1998	1.3 " " "

Population aged under 15 years

	Total	Male	Female
1998	29%	30%	28%

Population aged over 65 years

	Total	Male	Female
1998	7%	6%	8%

3. Ethnic groups: The ethnic composition of the population aged 14 years and over is: 28,060 Mapuche (470,730 men and 457,330 women), 48,477 Aymara (24,898 men and 23,579 women) and 21,848 Rapanui (9,358 men and 12,490 women). The Chilean State further reccgnizes the Atacama, Quechua and Colla communities of the north of the country, and the Kawashkar or Alacaluf and Yámana or Yaghan communities of the west Patagonian channels.

4. Birth rate:

1992 census	21.7 per thousand inhabitants
1996	19.3 " " "

5. Global fertility rate:

1992 census	2.6 children per woman
1996	2.4 children per woman

6. Life expectancy:

	Male	Female
1992 census	71 years	77 years
1996	72 years	78 years

7. Mortality:

Overall mortality

1992 census	5.5 per thousand inhabitants
1996	" " " "

Infant mortality

1992 census	14.3 per thousand live births
1996	11.1 " " " "

Maternal mortality

1992 census	0.3 per thousand live births
1996	0.2 " " " "

8. Women: The proportion of households headed by women is 25.3%. The participation of women aged over 15 years in the workforce, in November 1993, was 34.4%, as against 76.7% for men.

9. Religion: The Chilean State is secular and freedom of worship exists. The country's majority religion is Roman Catholicism. According to the 1992 census, 77% of the population said they were Roman Catholic; 12% were Evangelical; 1% Protestant; 4% belonged to other religions and 6% professed indifference or atheism.

10. Language: The official language is Spanish, but Mapundugum (Mapuche), Aymara and Rapanui are also spoken in the indigenous communities. The basic schools located in areas of indigenous influence dispense bilingual education.

11. Literacy: The approximate overall literacy rate is 94.6%, breaking down into 94.8% of men and 94.4% of women. Urban literacy is around 96.3%, corresponding to 96.7% of men and 96% of women. Rural literacy is about 86%, corresponding to 86.3% of men and 86% of women.

Economic indicators 1/

12. The nominal gross domestic product (GDP) in 1997 was $77,100 million. Per capita GDP in 1997 was $5,273. The annual inflation rate for 1997 was 6%. The foreign debt at 31 December 1997 was $26,775 million. On the basis of a workforce of 5,683,820 persons, the national unemployment rate in the quarter October-December 1997 was 5.3%. In the same period 4.7% of men and 6.6% of women were jobless.

II. GENERAL POLITICAL STRUCTURE

A. Historical outline

13. The present territory of Chile was discovered by the Spanish Crown in the mid-sixteenth century. The first discoverers arrived from the Viceroyalty of Peru. Chile was a Government and was also given the status of Captaincy General - in recognition of the war waged against the Mapuche people - until its independence from the Kingdom of Spain in the nineteenth century.

14. The first act of emancipation was recorded on 18 September 1810, with the establishment of the First National Junta of Government. The Independence Act was signed on 12 February 1818 and Bernardo O'Higgins, the soldier who led the patriotic troops, was proclaimed Supreme Director of Chile. In July 1823 the abolition of slavery was decreed, Chile being one of the first countries to take that step.

15. The promulgation of the 1833 Constitution saw the consolidation of a presidential-type republican political system based on the separation of state powers and the regular renewal of the Congress and of the President of the

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1/ Sources: Banco Central, Pro Chile, Ministry of Foreign Affairs, Instituto Nacional de Estadística.

Republic, through popular election under the property-based ballot system peculiar to the period. Starting in that year, the country maintained a process of establishment of the rule of law, interrupted only twice: by the civil war of 1891 that culminated in the victory of the advocates of a parliamentary system over the champions of presidential rule; and by the political and governability crisis of the 1924-1932 period, which saw a succession of short-lived military governments as a consequence of the emergence of the middle and popular classes of society, altering the traditional structures of political and economic power.

16. The approval of the Political Constitution of 1925 restored a staunch presidential system which, as of 1932, marked the start of an extensive period of normality in the generation of rulers and the consolidation of democratic institutions, which underwent change by means of gradual constitutional reforms that increased popular participation in the political process. In January 1934 a law was enacted giving the vote to women and foreigners in municipal elections, which measure was extended to presidential and parliamentary elections with a law of January 1949. The last amendments to the 1925 Constitution were made in 1971 and were intended to guarantee the rule of law and modernize the regularization of social and personal rights, expressly establishing political rights, improving the freedom of opinion for the sake of pluralism of the democratic system, and encouraging participation of the community with the constitutional recognition of its organizations.

17. On 11 September 1973, the democratic institutional system was disrupted with the overthrow of the constitutional government of President Salvador Allende Gossens and the establishment of the military regime - headed by General Augusto Pinochet Ugarte - which lasted until 11 March 1990.

18. From 11 September 1973 to August 1988 the country lived under one or more states of exception, a context that left the way open - during that period - to a situation of systematic violation of human rights, according to the National Commission on Truth and Reconciliation, a body set up in 1990 by the democratic government of President Patricio Aylwin to investigate the truth of what happened to the victims of the worst violations of fundamental rights during the period of military rule.

19. The military regime put an end to the economic policy that had prevailed in Chile in recent decades, based on import substitution, the encouragement of national industry, protectionism and state control and regulation to stimulate internal growth, with the State's participation in the production process through public enterprises. What was established instead was the social market economy model now operative, based on free private enterprise, private property, the determination of prices by market forces, stimulation of the export sector, the opening up of the economy to international trade and foreign investment, the subsidiary role of the State and a reduction in its size through the privatization of public enterprises.

20. The Political Constitution of 1980, now in force in Chile, was drawn up and put into effect during the rule of the military regime headed by General Augusto Pinochet. This Constitution establishes a highly presidential political system and contains certain authoritarian aspects that the sectors favouring unrestricted democracy have sought to modify since the defeat of General Augusto

Pinochet in the plebiscite, which modification was achieved in part with the constitutional reform of 1989.

21. An end to the period of military rule was obtained by means of a non-violent political solution that implied acceptance of the 1980 Constitution by the various forces opposed to General Pinochet's rule. As mandated by the Constitution, a plebiscite was held on 5 October 1988 to ratify or reject the designation of General Pinochet - made by the ruling Military Junta - to be president for the period of transition to democracy which, according to the Constitution, would last until 1997.

22. The rejection of that designation, with the victory of the "No" in the plebiscite, triggered a process of political negotiation between the authorities of the military regime, the political forces that supported it and those that opposed it, which produced a set of 54 constitutional reforms designed to change the most authoritarian aspects of the 1980 Constitution. The reforms, which were ratified by the citizens in a July 1989 plebiscite, include: amendments to the norms regulating states of exception, for the purpose of strengthening respect for human rights during such periods; the granting of constitutional rank to international human rights treaties that have been ratified by Chile and are in force, together with the duty of public bodies to respect and promote such rights; derogation of Article 8 of the Constitution, which severely restricted the activity of political parties; and the embodiment of political pluralism as a constitutional guarantee.

23. Democratic elections were subsequently called in December 1989. On 11 March 1990 Mr Patricio Aylwin Azócar took over as President of the Republic, having been elected for a four-year term of office. The present President of the Republic, Mr Eduardo Frei Ruiz-Tagle, was likewise elected in 1993 and is to remain in office until 11 March 2000.

24. Once democracy had been recovered in 1990, the National Congress was formally installed and a start was made on the process of restoring the democratic institutional system. Since then there has been a period marked by normal operation of the rule of law. No states of exception have been declared and the rights and freedoms guaranteed by the Political Constitution of the State have been placed under no restriction. The democratic governments of Presidents Aylwin and Frei have incorporated in the free market system a strategy of growth with equity, maintaining the macroeconomic balances and laying firm emphasis on social programmes to reduce poverty and exclusion, improve health and provide all Chileans with opportunities for education and training. They have also assisted the country's international reintegration in forums, world bodies and multilateral and bilateral treaties concerning trade, politics and human rights.

25. There are nevertheless still obstacles to a more democratic institutional system that have to do with the following factors:

(a) The binominal electoral system - alien to Chile's tradition and multiparty reality - does not permit adequate proportional representation of majorities and minorities, favouring the second electoral force in relation to the first and eliminating minority groups, which are thus left without parliamentary representation unless they join in electoral pacts.

(b) Nine senators are not elected by popular ballot but appointed by the members of the Supreme Court, the National Security Council and the President of the Republic.

(c) The resolutive character and the functioning of the National Security Council enable agreements to be reached by an absolute majority, which means that the representatives of the Armed Forces (four of the eight members of the body) weigh decisively in its decisions. The National Security Council is at present chaired by the President of the Republic and made up of the Presidents of the Senate and the Supreme Court, the Commanders-in-Chief of the Armed Forces, the Director General of the Carabineros (paramilitary police) and the Comptroller General of the Republic. The central functions of the Council are: to advise the President of the Republic on national security matters; to make known to him, to the National Congress and to the Constitutional Court its opinion on occurrences that cause severe prejudice to the institutional order and national security; to seek from authorities and public officials all requisite background material with respect to the external and interior security of the State, with which it is compulsory to provide the Council; to report previously on matters of law prescribing the air, sea and land forces to be maintained in times of peace and war, in addition to permitting the entry of foreign troops into the territory of the Republic and the departure from it of national troops.

(d) The Constitutional Court is not democratic in its composition since some members are appointed by the National Security Council. The fact that three members of the Supreme Court belong to the Constitutional Court produces a de facto duplication of functions. Its composition is restrictive on account of the requirements of membership. The Constitutional Court at present has seven members: three justices of the Supreme Court, elected by the latter; two lawyers elected by the National Security Council; a lawyer appointed by the President of the Republic; and a lawyer elected by the Senate.

(e) The Commanders-in-Chief of the Armed Forces (Army, Navy and Air Force) and the Director General of the Carabineros cannot be removed from office by the President of the Republic, as explained below (para. 32).

26. The democratic governments of Presidents Aylwin and Frei have submitted to the National Congress draft constitutional reforms intended to modify the aforementioned institutions that hamper the existence of a full democracy, which change has not been possible for want of support of the political opposition and on account of the presence of appointed senators (see para. 41(b)).

B. The State

27. The State of Chile is unitary in structure. The territory is divided into 12 regions and a metropolitan area in which Santiago, the country's capital, is situated. Each region is divided into provinces and each province into communes.

28. The political form of the State is the democratic system. The constitutional order enshrines a representative democracy in which the political authorities are elected directly by the people for a fixed term. Sovereignty is exercised by the people through regular elections and plebiscite and by the authorities established by the Constitution. Elections are used to choose the

President of the Republic, the members of the National Congress, city councillors and mayors. Plebiscites - whose scope is very limited - are resorted to for the adoption of constitutional reform decisions. Provision is also made for rudimentary aspects of semi-direct democracy through communal plebiscites.

29. As a legacy of the period of military rule between 1973 and 1990, the Constitution provides for a feature alien to the democratic system, which is the existence of some 20 per cent of the members of the Senate not elected by popular ballot but designated by particular state bodies.

30. The form of government within the democratic State is an essentially presidential republic.

C. The Executive

31. The Constitution refers to this branch of the State as the "Government", headed by the President of the Republic, who is the Head of State and in whom are vested the functions of government and administration which he performs in direct and immediate cooperation with the ministers of State, intendants, governors, mayors and other authorities. The President of the Republic is elected by universal suffrage for a period of six years and cannot be re-elected for the ensuing term. By constitutional reform of 1989, a four-year presidential term of office was exceptionally set for the person to assume the charge of President of the Republic on 11 March 1990, a period served by President Patricio Aylwin.

1. Powers of the President of the Republic

32. The President of the Republic has many different powers - constituent, legislative, political, international, military, financial, judicial and administrative - including the following:

- to submit draft constitutional reforms, to participate in their discussion in the Chambers of Congress, to make observations, to approve or reject draft reforms referred to him by the Chambers and to call a plebiscite in the event of a conflict between the President and the Congress over the reforms;

- to contribute to the making of laws in accordance with the Constitution and to sanction and promulgate them; by virtue of this faculty, he has exclusive initiative in the most important matters of law, participates in the discussion of any bill through his ministers; notifies urgent matters and makes observations on approved draft legislation;

- to conduct political relations with foreign nations and international organizations;

- to order the disposition of the air, sea and land forces; to organize and distribute them in accordance with national security needs;

- to assume, in the event of war, supreme command of the Armed Forces;

- to appoint and dismiss Commanders-in-Chief of the Army, Navy and Air Force and the Director General of the Carabineros. Article 32(18) of the Political Constitution expressly includes among the powers of the President that of appointing and dismissing the persons mentioned. Article 93 states that they shall be appointed by the President of the Republic for four years during which period they shall not be subject to removal from their posts, and that they may not be reappointed for a new term of office. Article 94 then provides that appointments, promotions and retirement of officers of the Armed Forces and the Carabineros shall be effected by supreme decree "in accordance with the corresponding constitutional organic law, which shall determine the respective basic norms". For their part, the constitutional organic laws of the Armed Forces and Carabineros of Chile, when addressing the matter of appointments, promotions and retirement of officers, repeat that they shall be effected by supreme decree and add the requirement of a "proposal by the corresponding institutional Commander-in-Chief and by the Director General, respectively". In other words, this norm in fact deprives the Head of State of his power to decide in the matter since without the proposal of the high command of the Armed Forces or the Carabineros he is unable to exercise his constitutional authority;

- to declare states of exception in the instances and forms provided for in the Constitution;

- to watch over the collection of public revenue and decree its expenditure in accordance with the law;

- to appoint the magistrates of the high courts of justice and the judges, on the proposal of the Supreme Court and the Courts of Appeal, respectively;

- to appoint and dismiss ministers of State, undersecretaries, intendants, governors, diplomatic agents and, in general, public officials enjoying his exclusive confidence;

- to exercise executive rule unilaterally issuing general or special norms such as regulations, decrees and instructions for the government and administration of the State;

- to issue legally binding decrees upon delegation of powers from the Congress by means of a law.

2. State administration

33. The administration consists of ministries, intendancies, provincial governments and the public bodies and services established for fulfilment of the administrative function, including the Office of the Comptroller General of the Republic, the Central Bank, the Armed Forces and the Forces of Public Order and Security, the Municipalities and the statutory public enterprises.

3. Ministers of State

34. They are direct and immediate collaborators of the President of the Republic in the government and administration of the State. There are at present the following ministries: Interior; Foreign Affairs; National Defence; Economy, Promotion and Reconstruction; Finance; Education; Justice; Public Works; Agriculture; National Resources; Labour and Social Security; Public Health; Mining; Housing and Urban Development; Transport and Telecommunications; Office of the Secretary General of the Government; National Planning; and Office of the Secretary General of the Presidency of the Republic. In addition to those 18 ministries, the Director of the National Women's Service (SERNAM) holds ministerial rank.

4. Intendants, Governors and Mayors

35. The intendants - enjoying the exclusive confidence of the President of the Republic - exercise the government of each region. The governors, who may be appointed and dismissed at will by the President, are in charge of administering the provinces. The local administration of each commune or group of communes is the responsibility of the municipalities; their highest authority is the mayor, who is elected by popular ballot and remains in office for four years.

5. Public force

36. The 1980 Constitution has a special chapter on the Armed Forces and the Forces of Order and Public Security, establishing a clear separation between the Armed Forces and the Forces of Order and Public Security. The former consist of the Army, the Navy and the Air Force, while the latter are made up of the Carabineros (paramilitary police) and the Police Department - uniformed and plain-clothes, respectively - who together form the "public force". Its specific duty is to guarantee public order and internal public security, and also to give effect to law with the aid of courts of justice in the implementation of court orders, given that the courts lack their own enforcement bodies. As of 1974, with the promulgation of Decree Law N° 444, during the period of military rule, both the Carabineros and the Police Department, formerly coming under the Ministry of the Interior, were switched to the Ministry of Defence, under the Carabineros and Police Department Undersecretaries, respectively.

37. Although the Carabineros have the necessary legal powers to take action in crime control, in the matter of public order - in actual fact and without this implying mandatory authority - they receive instructions and guidance from the Ministry of the Interior since the Ministry of Defence has no powers in this respect. This relationship between the Ministry of the Interior and the Carabineros is also given effect by the fact that - by supreme decree - this State Secretariat is entrusted with coordinating the rest of the ministries where citizen security is concerned.

38. Despite their common dependency, there are differences between the two police forces. While the Director General of the Carabineros cannot be removed from office, the Director General of the Police Department may be appointed and dismissed at will by the President of the Republic. With regard to the jurisdictions under which their members come, the Carabineros are subject to military justice while members of the Police Department, like any civilians, may

be tried in ordinary courts of justice. Furthermore, the Constitution grants the Armed Forces (Army, Navy and Air Force) and the Carabineros the character of armed corps, excluding in that respect the Police Department, whose members are nevertheless empowered to use firearms under their organic law.

D. The Legislature

39. The central legislative bodies of the Chilean State are: the National Congress, whose two branches together shape legislation, in addition to their supervisory and advisory activities with respect to policy; and the President of the Republic, who co-legislates in exercising his powers of legislative initiative, partial suspensive veto, authorization of legislative powers, qualification of draft legislation as urgent, participation in parliamentary debate through ministers, and sanction and promulgation of laws.

1. Law-ranking norms

40. In Chile, laws are categorized thus: organic and constitutional laws, which refer to matters expressly mentioned in the Constitution; laws interpreting the Constitution; qualified-majority legislation; common and ordinary laws. There are in addition international treaties, which, once agreed to by the Congress, rank as laws.

41. Legally binding decrees issued by the President of the Republic also rank as laws, as do the decree laws issued during the period of military rule and so endorsed by jurisprudence.

2. Composition of the National Congress

42. The 1980 Constitution establishes a bicameral system, in keeping with Chilean tradition. The National Congress consists of two chambers: the Chamber of Deputies and the Senate. The former is composed of 120 members elected by direct vote and is renewed in full every four years. The Senate is made up of three categories of members: (a) 38 who are elected by direct vote, remain in office for eight years and are replaced alternately every four years, those representing odd-numbered regions being replaced in one period, and those representing even-numbered regions and the metropolitan area being replaced in the following period; (b) nine senators who are appointed every eight years by the following state bodies: two former justices of the Supreme Court, elected by the latter; a former Comptroller General of the Republic, elected by the Supreme Court; a former Commander-in-Chief of the Army, one of the Navy, another of the Air Force, and a former Director General of the Carabineros, all elected by the National Security Council; a former rector of a state or state-recognized university, appointed by the President of the Republic; a former minister of State, appointed by the President of the Republic; (c) one or more senators as of right, to serve for life, who are former Presidents of the Republic having been in office for six years.

43. Deputy and senator posts are incompatible with each other and with any employment or assignment paid for out of public funds or funds of the municipalities, of autonomous state entities, of semi-public bodies or state enterprises, or of entities in which the Treasury has a capital holding, and with any other function or assignment of the same nature.

3. The Chamber of Deputies

44. The following are exclusive powers of the Chamber of Deputies:

- oversight of government action;

- accusation in proceedings against the President of the Republic, magistrates of the high courts of justice, the Comptroller General of the Republic, generals and admirals of the Forces of National Defence, intendants and governors.

4. The Senate

45. The following are exclusive powers of the Senate:

- to take cognizance of the accusations presented by the Chamber of Deputies in proceedings against the aforesaid authorities, in which the Senate acts as a jury and confines itself to declaring whether or not the accused is guilty of the crime, offence or abuse of power specified in the charge;

- to decide on the admissibility of such lawsuits as individuals may seek to bring against any minister of State;

- to rule on conflicts of jurisdiction between political or administrative authorities and high courts of justice (courts of appeal, courts martial and Supreme Court of Justice);

- to grant reinstatement of citizenship to those sentenced to afflictive punishment;

- to give or withhold its consent to the appointment by the President of the Republic of specific public officials;

- to grant its consent to the absence of the President of the Republic from the country for a period exceeding 30 days;

- to accept or reject the resignation from his post of the President of the Republic;

- to approve the declaration of the Constitutional Court on the responsibility of persons attacking the institutional order of the Republic;

- to give its opinion to the President of the Republic upon the latter's request.

5. The Congress

46. The following are exclusive powers of the Congress:

- to approve or reject international treaties submitted by the President of the Republic prior to their ratification;

- to pronounce in respect of the state of siege.

E. The Judiciary

47. The Judiciary consists of the following ordinary courts: the Supreme Court of Justice, the various courts of appeal, court presidents and justices, and the courts of general jurisdiction. The following are also part of the Judiciary as special courts: juvenile assize courts, labour courts, and military courts in peacetime.

1. The Supreme Court of Justice

48. The Supreme Court of Justice has its headquarters in the capital of the Republic. It consists of 21 judges, one of whom is elected by the Court itself, every three years, to be its president. Both the judges and the prosecuting attorneys of the Court are appointed by the President of the Republic from a slate of five persons proposed by the Court itself and with the consent of the Senate.

49. The Supreme Court has powers of management, control and supervision of all the courts of the nation, with the exception of the Constitutional Court, the Electoral Qualifying Court, the regional electoral courts and the military courts in time of war.

50. Powers of management refer to all the powers implied by the precedence of the Supreme Court over the rest of courts in the country, such as the formation of slates for the appointment of judges of the Court of Appeal and the Supreme Court, declaration of inapplicability of legal rules, the handling of proceedings to do with amparo, protection, appeal and substantive judicial review for the purpose of standardizing the interpretative criterion of the law in force.

51. Powers of control refer to the authority to apply sanctions and adopt measures in order to ensure that judicial officials abide by the standards regulating the performance of their duties.

52. Powers of supervision refer to measures adopted by the Court in order to secure prompt and improved administration of justice, including the authority to issue agreed orders such as those regulating amparo proceedings, applications for protection, and actions of unconstitutionality. The Supreme Court also entertains conflicts of jurisdiction arising between career judges and the political and administrative authorities (ministers of State, intendants, governors, mayors).

2. The courts of appeal

53. There are 17 courts of appeal, located in the following communes of the country: Arica, Iquique, Antofagasta, Copiapó, La Serena, Valparaíso, Santiago, San Miguel, Rancagua, Talca, Chillán, Concepción, Temuco, Valdivia, Puerto Montt, Coihaique and Punta Arenas. The number of judges and investigators varies according to the court and they are appointed by the President of the Republic from a slate of names proposed by the Supreme Court.

3. The lower courts

54. These courts are presided over by career judges who are appointed by the President of the Republic from a slate of names proposed by the court of appeal of the corresponding jurisdiction. The other judicial officials (secretaries, clerks, marshals, appeal court attorneys and auxiliary personnel) are appointed in accordance with the rules set by the Courts Organization Code. This organic law specifies the requisite qualifications of the judges and the number of years the prospective court justices or career judges must have served as lawyers.

4. Jurisdiction

55. The requisite organization and powers of the courts for the prompt and sound administration of justice throughout the country are governed by the Courts Organization Code. The Chilean legal order empowers the courts of justice to settle legal disputes arising between the parties, through the application of rules and sanctions established by law or through equity proceedings where the law expressly so permits.

5. Competence

56. The controversy termed trial, lawsuit or legal dispute may be of a civil nature, in which case it lies within the jurisdiction of the civil courts. If the dispute is of a penal nature, it lies within the jurisdiction of the criminal courts.

57. The ordinary courts are also competent to handle conflicts arising between individuals and the administration of the State, its agencies or the municipalities, since there are no administrative courts.

6. Second hearing principle

58. The general norm is that the aforesaid courts handle the lawsuits within their jurisdiction, and through appeal the judicial rulings are reviewed at second instance by the courts of appeal. The rulings at first instance of the military courts may be appealed against before the Court Martial.

7. Principles of constitutional rank underlying the Judiciary's work

59. The principles of constitutional rank that underlie the Judiciary's work are:

- the principle of legality, which holds that nobody may be judged by special commissions but by the court so designated and previously established by law;

- the principle of obligatoriness whereby the courts must always entertain the cases referred to them;

- the principle of independence, which exclusively entrusts the courts of justice established by law with the power to try, adjudicate and enforce judgments in civil and criminal cases, debarring the President of the Republic and the Congress from dealing with the

cases, reopening them after judgment has been handed down and reviewing the grounds or substance of judicial rulings;

- the principle of irremovability, intended to guarantee independence in the administration of justice, which prevents judges from being removed from their posts when discharging their duties in accordance with the conduct required by the laws and the Constitution;

- the right to command, the power whereby the ordinary and special courts making up the Judiciary enforce their decisions, for which purpose they give direct orders to the public force, namely the Carabineros and the Police Department (see para. 36).

III. GENERAL LEGAL FRAMEWORK WITHIN WHICH HUMAN RIGHTS ARE PROTECTED

A. Protection of fundamental rights in the Constitution

60. Article 19 of Chapter III of the Constitution enumerates the fundamental rights and freedoms that are protected under various international instruments. The Constitution guarantees to all persons: the right to life and to the physical and psychic integrity of the individual; freedom from any unlawful pressure; equality before the law; equal protection under the law in the exercise of rights; the right to legal defence and to be tried by the court so designated and previously established by law; the right to guarantees of rational and just proceedings, and the right not to be punished with a penalty other than that provided for in a law enacted prior to perpetration of the crime, unless the new law should favour the interested party; the right to respect for and protection of private and public life and the honour of individuals and their families; the inviolability of the home and all forms of private communication; freedom of conscience; the right to personal freedom and to individual security, and the right to live in a pollution-free environment and to enjoy health protection; the right to education and to freedom of instruction; freedom of opinion and the right to disseminate information without prior censorship; the right of peaceful assembly without prior permission and unarmed; the right to submit petitions to the authorities; the right of association without prior permission and to political pluralism; freedom to work; access to all public positions and employment; the right to social security; the right to organize; the equal distribution of taxes; the right to engage in any economic activity, abiding by the legal norms regulating it; freedom from arbitrary discrimination by the State and its bodies in economic matters; freedom to acquire ownership; the right of ownership; copyright on creative intellectual and artistic works; and industrial property rights.

61. The provisions of Article 19 of the Constitution are not exclusive, so that the enumeration of rights in the article is not exhaustive. This is indicated by the reliable record of the norm, regarding which the drafters state: "We have contemplated a norm ensuring respect for every right inherent in the human person, notwithstanding that it may not be expressly designated in the text".

62. The norms of Chapter III of the Constitution are in harmony with those of Chapter I, which also refer to essential rights emanating from the human

condition, such as Article 1, first subsection, which reads: "Men are born free and equal, in dignity and rights"; and the fourth subsection, subsequently mentioned in conjunction with Article 5, second subsection (see paras. 72, 73, 74 and 85).

63. Political rights, together with the nationality of natural persons, another essential right, feature in Chapter II of the Constitution.

64. According to Article 116, second subsection, of the Constitution, to modify Chapter III, covering fundamental rights, and Chapter I, a more rigid reform procedure is required than that applicable to the modification of other chapters of the Constitution.

States of exception

65. The Political Constitution of the Republic (Arts. 39 *et seq.*) makes provision for the following: a state of alert, in the event of external war; a state of siege in the event of internal war or disturbances; a state of emergency in serious cases of disturbance of the peace and damage or threat to national security, owing to internal or external causes; a state of catastrophe in the event of a public calamity.

66. Article 19, paragraph 26, of the Constitution expressly guarantees that the norms regulating or complementing the fundamental rights that it recognizes cannot affect them in their essence or impose conditions, taxes or requirements impeding their free exercise. For the purpose of strengthening this principle, the constitutional reform of August 1989 repealed the second subparagraph, whereby "the norms relating to states of constitutional exception and others which the Constitution itself contemplates" were excepted from the guarantee.

B. Reception of international law in the internal legal order

1. Customary international law and general principles of law

67. There is no explicit general norm establishing the automatic incorporation of customary norms and of the general principles of law in Chile's internal legal order. Hence the following possibilities have to be distinguished: when a legal rule of the internal regulations refers expressly to international law in a specific situation, in which case the Chilean courts must apply it; or where no such express reference exists, a situation in which the constant position of jurisprudence endorsed by legal writers has been to attribute legal validity to international law.

2. International treaties

68. Failing an express norm regulating this matter, the jurisprudence endorsed by legal writers takes the view that the reception of any international treaty in the internal legal order takes place through the conjunction of three stages: its approval by the National Congress, its promulgation by the President of the Republic, and the publication in the Diario Oficial (Official Gazette) of the text of the treaty and of the decree of promulgation. The basis of this interpretation of the courts is to be found in Article 50, paragraph 1, of the Constitution, which gives the National Congress exclusive power to: "approve or

reject international treaties submitted by the President of the Republic prior to ratification thereof. Approval of a treaty shall be subject to the same procedures as those prescribed for a law".

69. Once the international treaty has been approved in accordance with the aforesaid steps, its provisions may be applied by the courts and the administrative authorities and be pleaded before them.

70. In relation to other sources of internal law, the force of the international treaty is equivalent to that of the law. This is the conclusion of the prevailing jurisprudence of the consensus of legal writers, failing any express norm determining the matter.

3. Status of international human rights treaties

71. The Political Constitution grants special value in the internal legal order to international human rights treaties, as explained below.

72. The constitutional reform of 1989 modified the second paragraph of Article 5 of the Constitution, which read: "The exercise of sovereignty recognizes as a limitation respect for the essential rights originating from human nature". The amendment added that: "It is the duty of the organs of the State to respect and promote such rights guaranteed by this Constitution, and by the international treaties which have been ratified by Chile and are in force".

73. The added text was incorporated for the specific purpose of strengthening human rights in the country's legal order and establishing for all bodies and authorities of the State the duty to respect and promote them, incorporating in the Constitution the human rights treaties which according to the previous norms ranked as laws.

74. This norm extended the range of human rights protected in the Constitution and it is to be understood that the fundamental rights, duties and guarantees forming part of the international treaties ratified by Chile and in force in the country increase and complement the range of rights embodied in Article 19 of the Political Constitution of the Republic and have their same constitutional status. The internal legal system is thus linked to the international human rights order to which Chile belongs. The debate still existing in the country on the violation of human rights during the period of military rule makes it harder to achieve a stable consensus in the doctrine and jurisprudence on the constitutional status of the aforesaid treaties. The theme of compatibility between the human rights treaty norms in force and those of the internal legal order is at present the subject of debate with respect to doctrine and jurisprudence. The courts have ruled in this connection, particularly in cases relating to application of the 1978 Decree Law on Amnesty, putting an end to judicial proceedings investigating cases of disappeared detainees. A Supreme Court judgment of 1990 rejected the thesis of inapplicability, on the grounds of unconstitutionality, of legal rules on amnesty. But two Court of Appeal judgments of 1994 ruled out application of the Decree Law on Amnesty and the consequent closing of the judicial investigation regarding disappeared detainees, on the ground that amnesty is expressly or implicitly prohibited under international conventions to which Chile is party, opening the way to direct application of international human rights law by the country's courts.

This ruling was subsequently revoked by the Supreme Court. The judgments handed down in the aforesaid cases were not issued specifically on the scope of the second paragraph of Article 5 of the Constitution, or on the force of the conventions to which the norm alludes.

4. International human rights treaties ratified by Chile which are in force

(a) Prior to the establishment of the United Nations and the Organization of American States

75. International Convention for the Suppression of the Traffic in Women and Children. Ratification: 15.01.1929. Entry into force: 20.05.1930.

Convention regarding the Status of Aliens in the Respective Territories of the Contracting States. Ratification: 12.03.1934. Entry into force: 14.09.1934.

(Inter-American) Convention on the Nationality of Women. Ratification: 29.08.1934. Entry into force: 12.11.1934.

International Agreement for the Suppression of the White Slave Traffic. Accession: 19.03.1935. Entry into force: 18.06.1935.

International Convention for the Suppression of the White Slave Traffic. Ratification: 19.03.1935. Entry into force: 18.06.1935.

Protocol relating to a certain case of statelessness. Ratification: 20.03.1935. Entry into force: 16.04.1935.

International Convention for the Suppression of the Traffic in Women of Full Age. Ratification: 20.03.1935. Entry into force: 15.04.1935.

(Inter-American) Convention on Political Asylum. Ratification: 28.03.1935. Entry into force: 17.05.1935.

(b) United Nations system

76. Convention on the Prevention and Punishment of the Crime of Genocide. Ratification: 03.06.1953. Entry into force: 11.12.1953.

Convention on the Political Rights of Women. Ratification: 30.09.1967. Entry into force: 18.10.1967.

Convention against Discrimination in Education. Ratification: 26.11.1971. Entry into force: 30.11.1971.

International Convention on the Elimination of All Forms of Racial Discrimination. Ratification: 12.11.1971. Entry into force: 20.11.1971.

Convention relating to the Status of Refugees. Ratification: 28.01.1972, with reservation. Entry into force: 19.07.1972.

Protocol relating to the Status of Refugees. Ratification: 27.04.1972. Entry into force: 20.07.1972.

International Covenant on Economic, Social and Cultural Rights. Ratification: 10.02.1972. Entry into force: 27.05.1989.

International Covenant on Civil and Political Rights. Ratification: 10.02.1972. Entry into force: 29.04.1989.

Convention on the Elimination of All Forms of Discrimination against Women. Ratification: 07.12.1989. Entry into force: 09.12.1989.

Convention on the Rights of the Child. Ratification: 13.08.1990. Entry into force: 27.09.1990.

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Ratification: 30.09.1988, with reservations. Entry into force: 26.11.1988. Instrument of withdrawal of reservations deposited: 13.03.1991. Entry into force: 07.09.1991.

Optional Protocol to the International Covenant on Civil and Political Rights. Ratification: 27.05.1992. Entry into force: 20.08.1992.

Slavery Convention; Protocol amending the Slavery Convention; Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery. Accession: 20.06.1995. Entry into force: 07.11.1995.

(c) Inter-American system

77. Inter-American Convention on the Granting of Political Rights to Women. Ratification: 10.04.1975. Entry into force: 29.05.1975.

Inter-American Convention on the Granting of Civil Rights to Women. Ratification: 10.04.1975. Entry into force: 26.04.1975.

American Convention on Human Rights ("Pact of San José, Costa Rica"). Ratification: 21.08.1990, with declarations. Entry into force: 05.01.1991.

Inter-American Convention to Prevent and Punish Torture. Ratification: 30.09.1988, with reservations. Entry into force: 26.11.1988. Instrument of withdrawal of reservations deposited: 21.08.1990. Entry into force: 13.01.1991.

Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women ("Convention of Belém do Pará"). Ratification: 15.11.1996. Entry into force: 11.11.1998.

C. Remedies guaranteeing the exercise of fundamental rights

78. Constitutional and legal norms guarantee all inhabitants of the country judicial and administrative remedies to re-establish their rights in the event of infringement. The remedies of protection and amparo are fully operative at present both in normal circumstances and in periods of exception, which was not the case prior to the constitutional reform of 1989 since neither was admissible during the states of alert and of siege.

1. Remedy of protection

79. In accordance with Article 20 of the Constitution, this remedy is intended to preserve the fundamental rights therein specified from deprivation, disturbance or threats to their legitimate exercise on account of arbitrary or unlawful acts or omissions. Although the Constitution does not state this, jurisprudence has determined that the authors of the grievance open to protective action may be the political or administrative authority, an individual or a legal entity. In conformity with the nature of the remedy, its handling - before a court of appeal - is very summary and free of undue formality in order to make the exercise of preventive action effective. The background and the evidence are assessed according to equity. The judgment is definitive and appealable before the Supreme Court within a short period of time. The decisions of the courts must be issued within peremptory time limits, and there are ample opportunities for immediately taking the necessary measures to restore the rule of law and ensure the protection of the person concerned.

80. This remedy ensures most of the rights guaranteed in the Constitution: the right to life and to the physical and psychic integrity of the individual; equality before the law; the right not to be judged by special commissions but by the court specified by law and previously established by law; the right to respect for and protection of private and public life and the reputation of individuals and their families; the inviolability of the home and all forms of private communication; freedom of conscience; the right to choose one's health system; freedom of instruction; freedom of opinion and the right to impart information without prior censorship; the right of peaceful assembly without prior permission and unarmed; the right of association without prior permission; freedom to work; freedom to organize; the right to engage in economic activity; freedom to acquire ownership; the right of ownership; copyright; and the right to live in a pollution-free environment. Individual freedom and security are protected by the remedy of amparo.

2. Remedy of amparo

81. Under this name the Political Constitution establishes the habeas corpus in its Article 21. Its characteristic feature is that it is a special remedy for cases of deprivation of liberty in which the Constitution or the laws are infringed. Its purpose is to "restore the rule of law and ensure due protection of the person concerned", with investigation of the manner in which the detention is being conducted. It is regulated by the Code of Penal Procedure and the 1932 Agreed Order of the Supreme Court, which refers to its handling and judgment. The aforesaid enactment establishes a rapid and informal procedure for reaching a decision on the measure of deprivation of liberty. The remedy may be lodged by any person with the Court of Appeal, requires no formality and must be

ruled upon within 24 hours. Both the Constitution and the Code mention the possibility that the court may order the personal presentation of the detainee. In practice the latter's situation is ascertained by means of written communications or consultations by telephone directed to the apprehending body.

82. This remedy may also be lodged preventively on behalf of any individuals suffering a disturbance of or threat to their right to personal freedom and security. In this case the court announces the necessary measures to protect the person concerned.

3. Administrative remedies

83. In accordance with the Constitutional Organic Law of General Bases of the Administration of the State (N° 18.575, Art. 9): "Administrative acts shall be open to challenge by means of the remedies established by law. It shall always be possible to lodge that of reconsideration with the body responsible for the act in question and, where appropriate, hierarchical remedy before the superior of the official concerned, without prejudice to relevant jurisdictional action".

84. For its part, the Constitutional Organic Law of the Office of the Comptroller General of the Republic (N° 10.336, Arts. 6 and 10) states that any decree issued through the organs of state administration shall be subject to constitutional review proceedings. By virtue of this mechanism, the audit body exercises wide powers of investigation through reports that are binding on the administration, based on the extensive range of national norms, including that protecting the fundamental rights of individuals.

D. Authorities with competence in human rights

85. In the exercise of their functions, all the authorities of the country have the duty to respect and promote human rights. The Constitution establishes, as the basis of constituted authority, the intention of the State to be "in the service of the individual", for which purpose it must "contribute to creating the social conditions which permit each and every one of the members of the national community to achieve the greatest possible spiritual and material fulfilment, with full respect for the rights and guarantees established by this Constitution" (Art. 1, 4th subpara.).

86. In Chile, human rights are regarded as limits to the sovereignty of the State. By constitutional mandate the power of the State is limited by the rights that derive from human nature. Article 5 of the Constitution proclaims in its first subparagraph that: "Exercise of sovereignty recognizes as a limitation the respect for the essential rights originating in human nature". As mentioned previously, by virtue of the constitutional reform of 1989, a second subparagraph was added to that article stating: "It is the duty of the organs of the State to respect and promote such rights guaranteed by this Constitution, and by the international treaties which have been ratified by Chile and are in force". By virtue of this norm, each organ of the State, in its field of competence, must respect the human rights of all the inhabitants of the country and promote them in order to ensure their effective validity. With that reform the Chilean State is pledged to the progress of human rights and compliance with the international obligations generated by the international human rights conventions that have been ratified and are in force.

87. The courts that go to make up the Judiciary (see paras. 47-59) are those with jurisdiction to entertain complaints lodged by individuals of violation of their rights. In Chile there are no specific public bodies responsible for monitoring the application of human rights.

88. As part of a process of modernizing justice in Chile, a reform is now being prepared that transforms the present system of penal procedure, with the issue of a new Code of Penal Procedure replacing the present inquisitorial procedure with one that meets the requirements of a public and adversarial oral trial, which will be the responsibility of a collegiate court weighing the evidence and passing sentence, and of government procurators with wide powers of investigation during the inquiry, in keeping with a set of guarantees protecting the accused right from the outset of the proceedings. As part of this transformation the Diario Oficial (Official Gazette) published, on 16 September 1997, Act N° 19.519 on constitutional reform relating to the public prosecution department, while currently pending are the organic bill on that institution and other draft legislation forming part of the procedural reform.

89. The right to legal defence is embodied in the Constitution (Art. 19, N° 3, 2nd and 3rd subparas.), supplemented by the Code of Penal Procedure (Arts. 67, 278 and 303). It is compulsory from the moment the accused is brought to trial, as is the guarantee of defence free of charge for those unable to afford it. This is provided by duty lawyers and those of legal assistance corporations where, side by side with contracted lawyers, law faculty graduates work without remuneration as a requisite qualification for their subsequent lawyer status.

1. Bodies responsible for supervising constitutional supremacy

90. The peremptory character of all the constitutional norms - previously stated - concerning fundamental rights and the duty of the authorities to protect them is based upon the embodiment of the principle of constitutional supremacy, which prescribes subordination of the action of state organs to the Constitution and the relevant norms established: "The precepts of this Constitution are binding both upon the heads or members of the said organs and on all persons, institutions or groups. Breach of this principle shall generate responsibilities and sanctions to be determined by the law" (Art. 6). The following organs are those entrusted with supervising this supremacy.

Constitutional Court

91. Its composition has been explained earlier (see para. 25(d)). It exercises preventive supervision of the normative supremacy of the Constitution during the procedure and as part of the law-making process. Organic constitutional laws and interpretative legislation are compulsorily subjected to this supervision. The rest of the law-ranking norms are monitored in the event of any querying of the constitutionality of a bill by the President of the Republic, the Senate, the Chamber of Deputies or one quarter of the serving members of either chamber.

92. Together with that assignment, the Constitutional Court may declare the unconstitutionality of parties, movements and organizations whose purposes, acts or conduct fail to respect the basic principles of the democratic system, attempt to establish a totalitarian regime or advocate violence as a means of achieving political aims.

Supreme Court

93. Ex officio or on application by a party, the Supreme Court protects the constitutional supremacy of legal norms in force that are at variance with the text of the Constitution, declaring them inapplicable only in the particular dispute concerned by the declaration, without depriving of validity or force the text regarded as unconstitutional. It discharges this function as part of its powers of management (see para. 50).

Electoral Qualifying Court

94. This Court has five members: four elected by the Supreme Court, three being justices or former justices and one a lawyer, in addition to a former president of the Senate or of the Chamber of Deputies having held the post for at least three years. This body takes cognizance of and qualifies vote counts in elections, resolves any complaints arising and proclaims the candidates elected.

Office of the Comptroller General of the Republic

95. The Office is headed by the Comptroller General of the Republic, an official who cannot be removed from his post and is appointed by the President of the Republic with the consent of the Senate adopted by a majority of its serving members. Its purpose is to check on the lawfulness of administrative acts and on the constitutionality of the decrees with legal force which, upon delegation of powers from the Congress, are issued by the President of the Republic.

2. Bodies responsible for shedding light on and making reparation for systematic human rights violations committed during the period of military rule

National Office for Return (ONR)

96. This entity was established to see to the reintegration of Chilean exiles and functioned until August 1994. During its three years of operation it dealt with 19,251 returnees, representing with their families a total of approximately 56,000 people.

National Commission on Truth and Reconciliation

97. On 25 April 1990, by Supreme Decree 335 of 9 May 1990 of the Ministry of Justice, the National Commission on Truth and Reconciliation was established for the purpose of investigating the most serious human rights violations committed between 11 September 1973 and 11 March 1990, these being understood to cover the situations of disappeared detainees and persons executed or tortured to death, and appearing to involve the moral responsibility of the State by virtue of acts committed by its agents or by persons in its service.

98. The report submitted by the Commission after nine months' work concluded that there had been extremely serious human rights violations resulting in the death, between 1973 and 1990, of a total of 2,279 persons. Apart from the cases noted, 614 were unable to be cleared up as the Commission did not have enough information to reach a conclusion.

National Corporation for Compensation and Reconciliation

99. Within a set period of activity which was extended until December 1996, the National Corporation for Compensation and Reconciliation, established by Act N° 19.123 of 8 February 1992, implemented the recommendations of the report submitted by the National Commission on Truth and Reconciliation, with particular regard to assessment of cases not resolved by the latter, investigation of the final fate of the victims, and moral and material compensation for the victims of human rights violations and their families.

100. Upon completion of its term, the Corporation issued a final report summarizing the work carried out during its four and a half years of activity. The Corporation dealt with and ruled on 2,188 cases denounced, 899 of which were assessed as victims. The work done by the Corporation and the Commission amounted together to the investigation of 4,750 denunciations and the declaration of 3,197 persons as victims - 2,095 whose deaths had been established and 1,102 who had disappeared after their detention.

101. The activities of the former Corporation regarding investigation of the final fate of the victims, compensation for them and the deposit of the records of that entity are at present continuing under the supervision of the Ministry of the Interior, as provided by the Government through Supreme Decree 1005 of 25 April 1997.

3. Compensation and rehabilitation schemes for victims

Compensation for members of the families of non-surviving victims of human rights violations committed during the period of military rule

102. The compensatory benefits granted by the State to members of the families of non-surviving victims of human rights violations or political violence committed in the country between 11 September 1973 and 19 March 1990 are regulated by Act N° 19.123, of 8 February 1992, which established the National Corporation for Compensation and Reconciliation.

103. The above law grants compensatory benefits to members of the families of persons recognized as victims by the National Commission on Truth and Reconciliation or by the National Corporation for Compensation and Reconciliation, whether they died or were victims of forced or involuntary disappearance; the benefits are equal for the relatives of both.

104. As stated previously, following the investigations of the Commission and the Corporation, the State has recognized as victims a total of 3,197 persons, in respect of 2,095 of whom (65.53 per cent) the circumstances of their death were established, and in 1,102 cases the circumstances of forced disappearance were ascertained.

105. Act N° 19.123 grants two types of economic benefits: a scheme of allowances and of educational benefits.

106. A monthly compensatory allowance is paid to persons in the following degrees of relationship with the victims: (i) surviving spouse; (ii) mother of the victim, or father if there is no mother; (iii) mother or father of a natural

child of the deceased; (iv) sons and daughters of the deceased, whether legitimate, natural, adopted or illegitimate (conceived outside wedlock and not recognized as natural children by means of the statutory formalities). For the first three categories of relations, the allowance is paid for life; for children it is paid until the last day of the year of their 25th birthday, unless they are disabled, in which case the allowance is also paid for life.

107. These allowances are readjusted annually, on the same occasions and in the same proportions as the pensions of the general public system of social security.

108. The State bears the cost, without deduction from the monthly allowance as in the case of other pay and pensions, of the percentage equivalent to the health service contribution, at present 7 per cent. This contribution enables the recipients to use the medical care system of their choice, which partially subsidizes the cost of health care either through the public entity, the National Health Fund, or by means of affiliation to private health schemes.

109. In addition to the recipients of compensatory allowances, the parents and brothers and/or sisters of victims, even if not in receipt of allowances, are entitled to the free medical care dispensed in the establishments depending on or attached to the national health system.

110. By express provision of Article 24 of Act N° 19.123, the compensatory allowance is compatible with any other allowance, of whatever nature, that the recipient may enjoy or be entitled to, and is likewise compatible with any other social security benefit established by law.

111. The educational benefits consist in the payment by the State of the full cost of registration and monthly tuition fees charged by higher educational establishments, universities, professional or vocational institutes and technical training centres in which the children of victims study, payment of which is made directly to the establishments concerned; and in the payment of a monthly attendance grant remitted during the term times of each academic year directly to the children of victims providing documentary evidence that they are pursuing studies in secondary or higher establishments. Unlike the monthly allowance, which, as stated, ends for children on the last day of the year of their 25th birthday, the age limit for the receipt of educational benefits is 35 years. These benefits and the monthly compensatory allowance may be drawn concurrently.

112. The Institute of Provisional Normalization (INP), which is the public service responsible for receiving applications and administering the system of allowances, handled 6,089 applications for allowances. Of these, 5,859 were granted and 230 were turned down for want of the statutory degree of relationship with the victims or because, in the case of children, they were over 25 years old. Of the persons recognized as beneficiaries, 5,726 have, as at 30 September 1997, been paid their allowances and 133 applications are in abeyance pending essential information to establish the applicants' credentials.

Indemnification for loss caused by the commission of an offence

113. The Code of Penal Procedure establishes the principle of compensation for the effects of a punishable act through civil proceedings to secure indemnification in respect of that act.

Indemnification for error of law

114. The Constitution (Art. 19, N° 7, (i)) establishes as a guarantee of personal freedom and security the right to indemnification by the State for any patrimonial or moral loss suffered as a result of having been tried or sentenced in any proceedings upon a decision which the Supreme Court, on application by the party concerned, declares to be unjustifiably erroneous or arbitrary.

IV. INFORMATION AND PUBLICITY

A. Dissemination of the report of the National Commission on Truth and Reconciliation

115. The report was issued in 3,000 copies and distributed to all public libraries and universities in the country. It was also publicized in the form of a supplement in the newspaper *La Nación*, which enjoys nationwide circulation (see para. 97).

B. Dissemination of human rights instruments

116. It was reported that the tasks entrusted to the National Commission on Truth and Reconciliation included that of recommending the necessary legal and administrative measures to forestall and prevent the serious human rights violations on which it was responsible for shedding light. The report submitted by the Commission on completion of its assignment analyses the situation in Chile between 1973 and 1990, stating that there did not exist "a sufficiently firm national awareness of the overriding duty to respect human rights" and adding that "the education of our society did not succeed in duly incorporating these principles in its culture". In keeping with these conclusions, the Commission drew up wide-ranging and specific recommendations of a legislative, educational and cultural nature.

117. The work of coordinating, implementing and promoting the necessary action for compliance with those recommendations was entrusted to the National Corporation for Compensation and Reconciliation. Two of the programmes carried forward by the Corporation, "Education and Cultural Promotion" and "Legal Studies and Research", were designed to give effect to a culture of human rights.

1. Publication of a document entitled "Constitution, Treaties and Essential Rights"

118. The document, prepared by the aforesaid "Legal Studies and Research" programme, brings together all the international human rights treaties that have been incorporated in Chile's own legal norms - with constitutional rank in accordance with Article 5 of the Constitution - together with an explanation of

the basic notions of the legal order of human rights, the nature of international treaties establishing them and their linkage with the country's internal law. The document was distributed to various public authorities and, in particular, to all judges in Chile.

2. Publications of the Programme for Education and Cultural Promotion of the National Corporation for Compensation and Reconciliation

119. This programme issued a set of publications with the cooperation of various public and private entities and contributions from professionals in a number of fields. These publications - some of which are mentioned below - are available in the country's public libraries, in the faculties and central libraries of Chilean university-level establishments, in the main private study centres, in non-governmental organizations and in the central and regional departments of the Ministry of Education.

The Convention on the Rights of the Child. Published in 1994, for distribution particularly to the country's teachers;

The Universal Declaration of Human Rights. Published in 1994, for distribution to participants in the training workshops for teachers conducted by educational supervisors in various regions of Chile;

Fundamental Contents of Human Rights for Education (1995). Intended for teachers and educators, it contains a study of 38 rights selected from four international human rights instruments, presented from the legal, philosophical, historical and educational angles;

Bibliographical Research for Human Rights Education (1994). A review of existing bibliographical material in Chilean libraries and documentation centres on the theme of human rights, for use by the country's teachers;

Human Rights Education. Notes for a new practice (1994). Published in connection with the Interdisciplinary Human Rights Course for Teacher Training Institutions, conducted in Santiago in August 1994 for teachers in the country's university colleges of education;

Human Rights Unit for the Dignity of the Person (1994). Presents 22 teaching units awarded prizes in a contest staged for teachers at all levels of formal education, in which they had to propose ways of incorporating the substance and principles of the Universal Declaration of Human Rights in the curriculum of each educational unit, in order to generate a teaching practice consistent with a culture respectful of human dignity;

Catalogue of teaching materials for human rights education (1994). Contains a selection of educational materials designed for human rights teaching;

Training Manual for Educators (1994). A collection of human rights training schemes conducted by the Social Pastoral Vicariate of the Archbishopric of Santiago, which were practised through countrywide work with teachers between 1989 and 1994;

Further Training for Teachers (1994). Proposal by the Social Pastoral Vicariate of the Archbishopric of Santiago, based on that entity's experience of encouraging a new form of teaching having regard to human rights education;

Self-learning Guides for Human Rights Education (1996). Contains 50 guides attempting to incorporate human rights in the various curricular subjects. They are intended for pupils in pre-basic, basic, secondary, differential and rural education; and for parents, attorneys and teachers.

C. Preparation of reports to the committees of the international human rights conventions

120. As of March 1990, these reports are prepared directly by the Office of the Human Rights Adviser of the Ministry of Foreign Affairs, or supervised by that Office when prepared by governmental authorities specializing in the particular subject. Various government departments assist this task by supplying information.

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COSTA RICA

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I. LAND AND PEOPLE

1. The national territory is bounded by the Caribbean Sea, the Pacific Ocean and the republics of Nicaragua and Panama. The boundaries of the Republic are those fixed by the Canas-Jerez Treaty of April 15, 1858, confirmed by the Cleveland Award of March 22, 1888, with respect to Nicaragua, and the Echandi Montero-Fernandez Jaen Treaty of May 1, 1941, in regard to Panama. Coco Island, located in the Pacific Ocean, forms a part of the national territory.

A. Language

2. The national language of Costa Rica is Spanish (art. 76 of the Political Constitution), and English is spoken on the Caribbean seaboard.

B. Education

3. The essential nature of education as a basic human right obliges both the State and society to prepare and implement concrete measures aimed at providing an education for all Costa Ricans, in accordance with article 78 of the Political Constitution ("General basic education is compulsory; this, the pre-school stage, and diversified education are free and supported by the nation…"), and by Education Law No. 2160 of 1957.

4. With a view to fulfilling these commitments under present-day conditions, in the framework of the education policy for the twenty-first century approved by the Higher Council for Education in 1994, the Ministry of Public Education (MEP) has opened a national debate on two important legal initiatives: the proposed amendment of article 78 of the Political Constitution intended to introduce compulsory pre-school education and set the level of State investment in education at 6% of GNP, and a bill on basic essentials and guarantees for the expansion and continuous improvement of the national education system, which will address, over a ten-year period, thirteen objectives relating to strategic areas of education, including quality, coverage, facilities, teacher incentives, and training.

5. Enrolment across all educational levels rose to 787,546 students, a total 14,907 greater than in 1995 (increase of 1.9%). Two-thirds of enrolments were in primary education (65.9%), a quarter in secondary (26.4%) and the remainder at the pre-school level. Within the secondary sector, four out of every five pupils were in academic education and the rest in technical education (table 1).

6. The Costa Rican education system divides into a formal sector, which includes the areas covered by the Education Act (pre-school, primary, secondary and university) backed by adult education (primary and secondary systems), special education and para-university higher education, and a non-formal sector providing a wide range of study options which do not call for formal education requirements and are not generally recognized by the State.

7. The latter include the National Institute of Apprenticeship (INA), a public institution responsible for educating the workforce through vocational training.

Table 1

Initial enrolment according to level and type of educational sector, 1994-96

Level of sector	Initial enrolment			Relative distribution		
	1994	1995	1996	1994	1995	1996
TOTAL	747,557	772,639	787,546	100.0	100.0	100.0
Pre-school	55,125	58,371	60,710	7.4	7.6	7.7
Primary	495,879	507,037	518,603	66.3	65.8	65.9
Secondary	196,553	207,231	208,233	26.3	26.8	26.4
Academic	160,340	167,709	168,845	21.4	21.7	21.4
Technical	36,213	39,522	39,388	4.9	5.1	5.0
TOTAL	747,557	772,639	787,546	100.0	100.0	100.0
Public	685,342	708,577	717,958	91.7	91.7	91.2
Private	42,934	45,288	50,692	5.7	5.9	6.4
Semi-public	19,281	18,774	18,896	2.6	2.4	2.4

Source: National Panorama 1996, Ministry of Planning and Economic Policy (MIDEPLAN)

8. In 1996, the level of real per capita investment in education exceeded 29,500 colones, an increase of 22.5% over 1990. Education accounts for 25% of public investment in the social sector. However, in recent decades the quality of the service has been sacrificed for quantity (State of the Nation, 1996).

9. Historically, Costa Rica has invested great effort and considerable funding in public education, a factor that has benefited its development and facilitated social mobility. A useful indicator in this regard is the educational level of the parents of university students, as shown in table 2.

10. Only around 30% of the parents of university students in 1996 had undertaken any higher education. By contrast, 53% of the population aged over 12 years had some primary education, and only 10% had achieved any level of higher education (State of the Nation, 1996).

11. These results show that, although the children of parents with higher education attend university in greater numbers than the children of parents with a primary education, higher education is becoming a factor in upward social mobility (State of the Nation, 1996).

Table 2

Students in State universities according to the educational level of parents, 1996 (%)

	Institutions*			
	University of Costa Rica	Costa Rican Technical Institute	National Autonomous University	TOTAL
FATHER				
None	2.6	2.2	5.6	3.5
Incomplete primary	15.6	15.6	23.4	18.0
Completed primary	16.2	19.5	22.9	18.8
Incomplete secondary	12.5	15.7	13.4	13.2
Completed secondary	10.0	10.7	9.2	9.9
Incomplete university	10.4	10.7	7.2	9.4
Completed university	26.1	19.6	14.4	21.5
Para-university	4.3	3.1	2.0	3.4
Other	2.3	2.9	1.9	2.3
MOTHER				
None	2.0	1.6	4.6	2.8
Incomplete primary	14.5	14.6	23.0	17.2
Completed primary	18.6	22.9	24.6	21.1
Incomplete secondary	15.1	16.9	15.0	15.3
Completed secondary	12.7	11.8	10.3	11.8
Incomplete university	8.8	8.3	5.5	7.7
Completed university	22.1	19.1	13.3	18.9
Para-university	4.4	3.0	2.1	3.5
Other	1.9	1.6	1.6	1.8

Source: CONARE, Office for Planning in Higher Education (State of the Nation, 1996)

* No information is available for the State Distance-Learning University

12. A programme to improve the quality of education in high-priority urban areas has not progressed as well as expected, owing to budgetary reasons. In 1996, 12 of the 32 schools given special attention were in San Jose (37.5%). Less has been done at the regional offices in San Carlos, Santa Cruz, Nicoya and Alajuela, each of which accounts for 3% (State of the Nation, 1996).

C. Economic Structure

13. The Costa Rican economy is now in a more streamlined and balanced state, but is still that of a developing country. Basically, the raw materials exported are too vulnerable to price changes on the world market. Although industry is recovering, it is still at an early stage and must therefore import increasingly expensive machinery and capital goods. Among the worst consequences of this situation are inflation and increasing external debt.

14. In 1980, after three decades of economic growth, Costa Rica faced one of the most serious crises in its history. The effects of the global crisis and the increasing external debt took their toll of a weak national economy. The government of the time responded to the crisis and the international pressures by suspending unilaterally its external debt repayments, which led to the loss of credit lines, particularly those of a short-term nature. The country fell into sharp recession, whose indicators in 1982 included a 7.2% decrease in GDP, with inflation running at almost 100% by the end of the year. Successive administrations employed, in varying degree, stabilization policies designed to balance global factors and improve productivity, and measures intended to achieve structural change and commercial liberalization. Although this achieved some streamlining of public spending and the State apparatus, it also reduced the consumer capacity of the population, which in turn affected the expansion of production and reduced social investment in health, education and housing.

15. Despite the continuing existence of a large middle class poverty increased, without falling back to the levels of the 1970s. Women have been worst affected by poverty, and comprise the majority of those in extreme poverty, as shown in table 3.

Table 3

Non-poor, poor and extremely poor population, by sex
(July 1996)

Sex	Extreme poverty	Poor	Non-poor	Others	Total
Women	9.02	13.92	60.25	16.81	100.0
Men	5.02	12.10	68.38	14.5	100.0

Source: National Statistics and Census Bureau (DGEC), 1997. National Survey of Multi-purpose Households (DGEC, 1997).

16. According to estimates by the Regional Employment Programme for Latin America and the Caribbean (PREALC/ILO, 1990), 25% of the Costa Rican population was poor in 1989, with 70% of those living in rural areas. The Ministry of Planning and Economic Policy identified 20.62% of families as poor in 1995. Impoverishment has been concentrated in rural areas and in cantons having a population density less than 100, where there is little access to land and productive resources, communications are difficult, and basic services are lacking. Urban poverty is found mainly in the metropolitan area of San Jose, at

the same levels as during the 1980s. Twenty-three per cent of these households live in extreme poverty (Pan-American Health Organization (PAHO/WHO)). Although a large middle class exists, its standard of living has declined owing to the worsening of the economic crisis.

17. An increase in the number of female heads of household began to be evident in 1980, a trend which intensified during the 1990s as a result of demographic changes and the economic crisis. Despite inconsistent sources and the fact that data are analyzed only in terms of heads of household and not according to poverty level, it may be said that in 1995 some 22-23% of all poor families were headed by a woman. In that year the National Plan to Combat Poverty identified 47,000 such women, 78 % of whom were aged between 30 and 69 (United Nations Population Fund (UNFPA)/MIDEPLAN/National Centre for Women and the Family, 1995).

D. Labour structure

18. Costa Rica has been unable to regain its former level of development since the economic crisis of the 1980s, even though matters have not been as serious as in other countries of Central and South America. Many of the alternative products introduced have not attracted investment, and industry has failed to adapt at the pace required by globalization and the liberalization of trade.

19. The recovery achieved since the crisis of 1981-82 is largely the result of a resumption in exports of coffee, bananas and non-traditional primary products. Industrial production has regressed, although some ground has been made up, mainly through a rise in informal activities in towns. For example, many women have taken advantage of the more flexible recruitment conditions associated with an increased amount of assembly work being made available. However, the working conditions are discriminatory, especially for those engaged in piecework either at home or as part of an association. The same situation can be seen in agriculture (Institute for Women and Latin American Faculty of Social Sciences (FLACSO), 1993; Guzman Stein, 1991 and 1995).

20. According to the National Survey of Multi-purpose Households, by July 1996 the Costa Rican workforce had increased to 1,220,440; 69.90% were male, and 30.1% female. The male workforce represented 26.64% of the population, and the female 11.48%. Although women have always contributed to national production, their involvement has been hidden, much of it taking the form of housework, unpaid domestic work or seasonal activities such as coffee picking. Women have regarded these tasks as part of their domestic responsibilities, and the institutions that record information have failed to ask questions designed to reflect the true scale of women's work and their contribution to national output.

21. Despite such problems, in the past three decades women's participation in the Economically Active Population (PEA) has increased significantly, accounting for 27.59% in 1980, 29.90% in 1992 and 30.14% in 1996. The growth of the female workforce in relation to the male was very marked during the period 1970-90. The increase for males was 92.9%, and for females 142.9%. The trend is shown more clearly by the following table.

Table 4

Net participation rates in the workforce, by sex and year, 1984-1996

	1980	1984	1988	1992	1996
Women	28.6	28.2	30.4	30.0	31.1
Men	77.1	75.9	77.4	74.0	73.7

Source: DGEC 1997; FNUAP/MIDEPLAN/CMF (1995). Gender images. Socio-demographic and economic statistics analyzed by gender. Costa Rica 1990-1994, San Jose, Costa Rica, MIDEPLAN (then: FNUAP/MIDEPLAN/CMF, 1995).

22. Between 1995 and 1996, the female participation rate decreased owing to a drop in vacancies and a rise in female unemployment. This situation was obscured by the fact that a large proportion of the female workforce unemployed for over six months was recorded as inactive.

23. Since the 1981-82 crisis, it is mostly the male workforce whose situation has improved. Table 5 shows that the highest rates of long-term unemployment mainly concern women, with fluctuations at different times. Female unemployment is at its worst in rural areas. For example, in 1991 the rural female unemployment rate was 8.3 %, as against 6.7% in towns. In 1996, there was a marked difference between the relative increases in female unemployment (7.6 % in towns, 9.2% in rural areas).

Table 5

Long-term unemployment in the workforce, by sex, 1990-96 (%)

	1990	1991	1992	1993	1994	1995	1996
Both sexes	4.6	5.5	4.1	4.1	4.2	5.2	6.2
Men	4.2	4.8	3.5	3.6	3.5	4.6	5.3
Women	5.9	7.4	5.4	5.3	5.8	6.6	8.3

Source: DGEC, 1997; FNUAP/MIDEPLAN/CMF, (1995).

B. Drug consumption

1. Psychotropic Drugs Act

24. On the basis of total numbers of complaints heard by the authorities in respect of breaches of the Psychotropic Drugs Act and their respective rates per 1000 inhabitants, it can be seen that such offences increased gradually each year from 1990, peaking in 1993 at 66 offences per 100,000 inhabitants. In the

final three years the rate stabilized at 61 per 100,000. (Table 6) (State of the Nation, 1996).

Table 6

Offences against the Psychotropic Drugs Act

	1990	1991	1992	1993	1994	1995	1996*
Consumption of drugs or marijuana**	0	11	82	119	203	84	59
Growing of marijuana	69	85	115	99	37	55	26
Possession of drugs and marijuana	659	710	1,119	1,198	915	1,109	1,203
Possession of marijuana seeds	3	5	21	12	23	7	12
Trafficking in drugs and marijuana	246	291	236	317	221	263	233
Other	328	306	441	419	449	517	594
Total Offences	1,305	1 408	2,014	2,164	1,848	2,035	2,127
Rates (%)	43	45	63	66	55	59	61

* The figures for 1966 are provisional
** The Act penalizes consumption in public places.
Source: Judicial Power, Department of Planning, Statistical Section.

25. The general tendency in the countries of the region, based on the incomplete information arising from confiscations and on the opinions of experts working in the penal justice system, indicates that production, trafficking and consumption of drugs have spread in recent years and that the results of the strategies adopted at international level are at least debatable. Action taken by the courts with regard to breaches of the Psychotropic Drugs Act, as measured by the ratio between sentences passed and the total number of complaints lodged on those grounds, is clearly on the increase; each year there is a greater number of sentences as a proportion of cases heard (table 7).

Table 7

Persons sentenced for breach of the Psychotropic Drugs Act as a percentage of complaints brought on those grounds, 1990-96

Year	Sentences	as % of complaints
1990	186	14.3
1991	155	11.0
1992	195	9.7
1993	186	8.6
1994	337	18.2
1995	410	20.1
1996	402	18.9

Source: Judicial Power, Department of Planning, Statistical Section.

2. Drug-taking

26. The Alcoholism and Drug-Addiction Institute (IAFA) has provided some of the results of its 1995 national survey on drug-taking (table 8):

Table 8

Users of "crack", by age at time of interview, 1995 (%)

Age	Type of user			Total
	Active	Inactive*	Ex-user	
12-20	100	---	---	100
21-29	60	20	20	100
30-38	33.3	50	16.7	100
39 and over	---	---	---	---

* User for more than one month but less than one year.

27. The overall level of inhalant use is the same as in 1990 (0.2%). The limited number of cases in a survey of this kind makes it impossible to draw any statistical conclusions; nevertheless, most cases occurred in urban areas or on the edge of towns, and mainly in San Jose province. All those who stated that they had used inhalants were single males with a primary education working in the industrial sector. Of those who sometimes experimented with inhalants, 86% had a low income.

Table 9

Users of marijuana, by age at time of interview, 1995 (%)

Type of user	Age				
	12-20	21-29	30-28	39 and over	Total
Active	20	30	40	10	100
Inactive	---	57.1	14.3	28.6	100
Ex-users	6.2	26.8	45.4	21.6	100

Source: IAFA

28. The recent users of marijuana were mainly single males with a primary or secondary education (88.3 %).

29. In spite of that, among those from high-income families 62.2 % were active users of alcohol; the figures for middle-and low-income families were 44 % and 34.8 %, respectively. (p=0.0000).

30. The figure for alcohol consumption in the previous month was 4% lower than in 1990. It covers, in absolute terms, 580,423 people. Four out of every 10 occasional users were in this category. A quarter of them had consumed alcohol on 5 to 10 days during the month, and 9 % of them had done so on 12 to 30 days. The latter included 5 % who had consumed alcoholic drinks on 30 days of the month.

31. A further important aspect standing in contrast to the 1990 data is that most of those among the later contingent who occasionally consumed alcohol had experienced spells of substance abuse or bouts (periods of drunkenness lasting two or more days).

3. Alcohol consumption

Table 10

Active consumers of alcoholic drinks, by age group, 1995

Age	%
41-50	15.3
12-20	14.3
51-70	13.1
21-40	57.3

32. The national figure for those who have consumed alcohol at some time in their lives is lower than in Peru (83.5 %) and Colombia (90 %). The data from

studies carried out at the beginning of the 1990s in Bolivia and Paraguay, among others, reveal levels in excess of 70 %.

Table 11

Percentage distribution of persons who have drunk alcoholic beverages at some time in their lives, by age at which drink was first taken, 1990-95

Age groups	Year		Variation
	1990	1995	
Less than 12 years	9.8	6.1	-3.7
13-15 years	16.3	15.6	-0.7
16-18 years	19.7	20.7	1.0
19 and over	54.2	57.6	3.3
Total	100	100	

Source: IAFA

33. Although it might seem that the table reflects a promising situation, it should be emphasized that, in both periods, large sectors of the population (45.7 % in 1990 and 42.4 % in 1995) reported having had their first taste of alcohol before 18 years of age, i.e. at a time when the law prevented them from purchasing alcoholic drinks.

E. Economic structure

1. Agriculture

34. Thirty-three per cent of the Costa Rican population works in agriculture, which contributes something less than 20 % of GNP. Productive land occupies 10 % of national territory, the rest being covered 41 % by pasture and 34 % by woodland. Cultivated areas fall into two main groups: the valleys and hollows given over to coffee and sugar cane, and the lowlands divided up into banana plantations.

2. Industry

35. Attempts are being made to restructure small- and medium-scale industry, and to foster an entrepreneurial culture as an indispensable requirement for the overall modernization of the national manufacturing sector. Micro- and small enterprises have become an important source of jobs and income for many families. This sector represents approximately 90 % of all industry in terms of the total number of businesses, generates 50 % of jobs and brings in around 40 % of industrial value-added. Given their importance, small and medium enterprises have attracted measures intended to maintain their competitiveness.

36. The economic and political integration of customs regimes is being strengthened through the implementation of instruments designed to regulate

trade within Central America, examples being controls on the origin of goods, technical standards, emergency procedures, unfair trading measures and plant health regulations.

3. Construction industry

37. Policy is aimed at promoting private construction, in view of the limited scope that exists for action based on public investment, owing to the financial problems. Steps have been taken to establish the legal framework needed to attract private sector involvement, the most important being the approval of the Public Works Concessions Act of 27 November 1992 and of the Joint Electricity Generation Act of 31 April 1995.

38. In addition, in July 1995 a new Rent Act was approved which, by eliminating a number of legal obstacles and introducing a series of partial or total exemptions, provides greater incentive for the construction of rented accommodation; by December 1997, the area covered by apartment blocks was 30 % greater than the previous December. The two main factors behind the revival of the construction industry have been the efforts to maintain macro-economic stability, and the development of new mechanisms for the funding of public works and the construction of housing.

39. This branch of the economy is highly sensitive to decisions taken in the world's major financial centres. This situation, as in Latin America in general, also applies to Costa Rica's nascent industrial capacity. Under the difficult conditions resulting from the global economic crisis since 1974, Costa Rica is attempting resolutely to diversify its production and become self-sufficient in certain manufactured goods, and thereby to prevent the impoverishment of its people.

II. DEMOGRAPHIC CHARACTERISTICS OF THE POPULATION

40. The national censuses carried out by the Statistics and Census Bureau have made it possible to apply standards to population growth in the second half of this century.

41. Living conditions have improved gradually, and, thanks to the application of medical techniques, the health of the population has improved greatly. Together with the notable increases in the numbers of women entering education and work, this has led to important changes in reproductive behaviour (use of family planning methods, greater age of mother on having first child, smaller size of nuclear family), with the result that the nation has passed rapidly through the stages of demographic transition.

42. The ever improving availability of potable water and health services and of information on food and nutrition, together with the government's mass vaccination campaigns, have led to a marked decrease in infant deaths.

43. In 1996, the birth rate declined to 23.3 per 1,000 inhabitants; the overall mortality rate was 4.1 per 1,000 inhabitants, and the infant mortality rate 11.8 per 1,000 inhabitants; in 1995, 94.6% of births took place in hospital (State of the Nation, 1996).

44. Under the accelerated urbanization, the country is experiencing different growth rates according to area (administrative centres and the rest), and the overall picture is changing from predominantly rural to predominantly urban.

A. Fertility rates

45. Although demographic changes have affected the whole country, types of reproductive behaviour differ according to area. For example, in San Jose the process of change is faster, owing to the existence of more directly and rapidly obtainable information on family planning and the adoption of changed behaviour patterns. The most notable effects of the widespread introduction and use of contraceptive methods have been a reduction in the size of the family group and changes in the age at which women have their first child.

B. Death rates

46. The infant mortality rate (TMI) is an excellent indicator of a country's health. In Costa Rica the rate has long been in decline, particularly during the 1970s, when an average improvement of around 13 per thousand per year was achieved thanks to notable advances in health conditions.

47. The TMI in Costa Rica improved from 200 to 70 deaths per 1,000 births between 1920 and 1960. At the beginning of the 1970s, the rate stood at just over 60 per 1,000 live births and, as a result of the process described above, by the end of that decade the rate was 20 deaths per 1,000 live births. Since then, the pace has slowed, and during the 1990s the rate has remained consistently at around 13 deaths per 1,000 live births.

48. With regard to the causes of death among children aged less than 1 year, the numbers of cases of infectious, parasitic and respiratory disease, which predominated in 1980, have all declined. Equally significant has been the reduction in geographical differences.

49. The ever-changing profile of the causes of infant mortality means that increased investment is continually needed in order to keep down the TMI; it is considered feasible that Costa Rica's infant mortality rate can be lowered further.

Table 12

Infant mortality rate, 1989-1996

	1989	1990	1991	1992	1993	1994	1995	1996
Birth rate	28.6	27.4	26.5	25.6	24.6	24.6	23.8	23.3
Infant deaths per 1,000 live births	13.9	15.3	13.6	13.7	13.7	13.0	13.3	11.8
Overall deaths per 1,000 inhabitants	3.9	3.8	3.8	3.9	3.9	4.1	4.2	4.1

50. The health sector is making efforts to minimize foreseeable causes. The Ministry of Health, through a strengthened National Committee for the Study of Infant Mortality (CONAMI) and nine regional subcommittees set up in 1996, analyzes and investigates infant deaths with a view to identifying situations where intervention is possible and appropriate measures can be taken.

51. Likewise, the Costa Rican Social Security Fund, through the National Breastfeeding Commission, has been promoting the benefits of breastfeeding for children's health, especially in the early months of life. To date, there are four hospitals which comply with the requirements of UNICEF's "Baby-friendly hospital initiative", located in San Ramon, Heredia, Nicoya and Grecia. Although this programme currently operates only in hospitals, it will be extended to other types of health care centre.

C. Life expectancy

52. Health conditions and the health of individuals have improved over the past 40 years. This is evident from the increase in life expectancy, which stood at 75.2 years for the period 1990-95 and will reach 75.6 years for the period 1995-2000. Women's life expectancy is greater than men's, as shown in table 13.

Table 13

Life expectancy, by sex, 1990-95

	1990	1991	1992	1993	1994	1995
Men	72.9	72.9	72.9	72.9	72.9	74.0
Women	77.6	77.6	77.6	77.6	77.6	78.6

Source: Ministry of Planning and Economic Policy (MIDEPLAN)

D. Population growth

53. In demographic terms, a population increases on the basis of births and the influx of immigrants, with the increase being partly offset by deaths and the losses attributable to emigration.

54. For 1990-95, the average numbers of recorded births and deaths were 80,600 and 12,500, resulting in a natural increase of some 68,100 persons per year. This population growth was also affected by a net migration balance which had been positive since the mid-1980s, owing to an influx of the nationals of neighbouring countries where there was war and economic displacement.

55. During the 1990s, the Costa Rican population exceeded three million, having reached one million only in 1955 and two million in 1976. According to the prevailing estimates and projections, the population of Costa Rica in 1996 was 3,442,917 inhabitants, comprising 1,740,117 men and 1,702,800 women.

56. Alongside this population growth, the death rate is one of the lowest in the world (4.0 per 1,000 inhabitants), owing to the youth of the population (33.6 % of people are younger than 15) and the great efforts the Costa Rican

health sector has devoted to achieving and maintaining effective and widespread services offering both preventive and curative medicine.

57. Education in Costa Rica can be divided into a formal system, comprising the levels covered by the Education Act (pre-school, primary and secondary), adult education (primary and secondary), special education and higher education, and an informal system that embraces a wide range of study options which do not call for formal education requirements and on the whole are not recognized by the State. The latter includes the National Institute of Apprenticeship (INA), a public institution whose task is to provide the workforce with educational opportunity in the form of vocational training.

58. With regard to migration, no reliable official statistics are available. However, it is estimated that some 300,000 Nicaraguans have entered the country in the past 12 years, many of them illegally. That total comfortably exceeds the number of Costa Ricans who settled abroad.

59. The birth rate has been the determining factor in the increase of Costa Rica's population. Also significant is the evidence of different patterns of reproductive behaviour among population subgroups.

60. The survey of reproductive health carried out by the Costa Rican Social Security Fund in 1993 found that the birth rate was 2.2 among women from higher social strata, and 4.2 among women from lower social strata. There was a high frequency of births outside marriage (46.6 %), mothers aged under 20 (18.4 %), single mothers (43.8 %), and births resulting from unplanned pregnancies (45.0%).

E. Structure of the family

61. The structure of families has changed considerably during the past two decades as a result of the transformation in demographic profile. Around the capital and in other urban areas, most are nuclear families based on a married couple, although that pattern alters the lower the position on the socio-economic scale. Family types also reflect sexual and reproductive behaviour patterns among the population.

62. These changes express trends that date back to the 1960s. By 1994, the numbers of unmarried couples and separated women were on the increase (State of the Nation Project, 1994). Although large families still exist in rural areas, Costa Rican society is moving towards a family model in which the number of children is limited and the mother has greater economic responsibility.

63. The increase in divorce and the reduction in marriages mean that in practice many families are regrouping under different arrangements. The marriage rate has been in slight but continuous decline. In 1990, 22,618 marriages were recorded, while in 1994 there were 20,073, equivalent to 29.5 per 100 inhabitants and 23.5 per 100 inhabitants respectively. By contrast, divorces increased from 14.5 per 100 inhabitants in 1990 to 16.7 per 100 in 1994 (State of the Nation Project, 1994).

64. Women have been taking on a greater share of responsibility in the area of social reproduction, partly for the reasons mentioned above, but also as a

result of the increase in births to single mothers. These rose from 30,119 in 1990 to 34,378 in 1994. The number of births for which the father was registered as unknown increased from 17,293 in 1990 to 19,993 in 1994. The following table illustrates this situation:

Table 14

Births according to status of mother and father, 1990-94

Status	1990	%	1991	%	1992	%	1993	%	1994	%
Births	81,939	100	81,110	100	80,164	100	79 714	100	80,391	100
Single mother	30,119	36.76	31,220	38.49	31,336	39.09	31,992	40.13	34,378	42.76
Unknown father	17,293	21.10	18,154	22.38	18,316	22.85	18,941	23.76	19,993	24.87

Source: MIDEPLAN, 1995

F. Indigenous population

65. In Costa Rica this comprises approximately 40,000 people (1.2 % of the national population), distributed in 22 reservations and belonging to eight ethnic groups, each having its own characteristics, language and culture, namely Chorotegas, Malekus, Terrabas, Huetares, Brunkas, Bribris, Cabeceres and Guaymies.

66. The legislation governing the situation of the indigenous peoples of Costa Rica covers a wide variety of measures. Firstly, the Political Constitution provides, in article 33, that "All persons are equal before the law and no discrimination may be made against human dignity." To that may be added article 50, which provides that "The State shall work for the greatest well-being of all inhabitants of the country, by organizing and stimulating production and the most adequate distribution of wealth."

67. The legal instruments that establish the norms applicable to relations between the State and the indigenous communities are Act No. 5251 of 9 July 1973, which established the National Indigenous Affairs Commission (CONAI) as a State legal entity enjoying autonomy and belonging to the decentralized sector; The Indigenous Act, No. 6172 of 29 November 1977, with its amendments and Regulations, which defines the indigenous population, the indigenous reservations and their various legal jurisdictions (limits, ownership, administration, exploitation, etc.); and Legislative Decree No. 7316 of 3 November 1992 ratifying ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries.

68. Other instruments with a bearing on the indigenous population are the Act proclaiming the Day of Cultures, the Convention on Biological Diversity, the Mining Code, the Official List of Indian Reservations, and the Declaration of National Emergency Zones on Indigenous Reservations.

69. The standing committee on social affairs of the Legislative Assembly is currently examining the draft of the Law on the Autonomous Development of Indigenous Peoples, which recognizes the right of indigenous peoples to establish their own mechanisms for dealing with land tenure and matters such as health, education, housing and finance in harmony with their traditions of protecting natural resources, preserving the ecosystem and maintaining environmental integrity.

70. Indigenous education in Costa Rica is the responsibility of the Ministry of Public Education's Department of Indigenous Education, which covers the educational regions of Talamanca, Valle de la Estrella, Coto Brus, Buenos Aires, Perez Zeledon, Turrialba and Chirripo where 77 % of the indigenous population live. In the indigenous areas there are 128 primary schools and one college, at Amubri, Talamanca. Construction of the Boruca-Buenos Aires de Puntarenas College was planned for 1997 with the co-operation of the Spanish and Japanese Governments. In 1996 there were 206 indigenous teachers in Costa Rica. Of those, 108 were graduates and 98 non-graduates, with 83 being in post and 123 working as assistants.

71. Central to these achievements has been the restructuring of the national system for the recruitment, evaluation, selection and appointment of teachers working in indigenous schools and colleges. Other developments have been the establishment of an information system on the educational status of the 10 indigenous communities in Limon and Puntarenas provinces, the implementation of a pilot project on technical education at Quitirrisi de Mora and, in 1996, the incorporation of three elements of indigenous education, namely mother tongue, the indigenous environment and indigenous culture (art, craft, music), in the study plan being developed for indigenous communities, subject to approval by the Higher Council for Education. (Ministry for Public Education, Department of Indigenous Education, March 1997).

III. COSTA RICAN POLITICAL SYSTEM

72. As the political system is very complex, it is best to begin by examining both the regime that adopted the repealed Constitution of 1871 and the draft Constitution, ultimately rejected, which was submitted to the Constituent Assembly by the Founding Committee of the II Republic.

A. Political regime

1. In the Constitution of 1871

73. The political constitution of 1871 was in force from 7 December of that year until its repeal in early 1948. It shaped a constitutional period entirely different from those which had gone before, one characterized by its resistance to the vagaries of the political process. It was the document that established constitutional stability in Costa Rica (Mario Alberto Jimenez).

74. The reason for the permanence of the 1871 Constitution was the slow pace of national development. From the political viewpoint, the 1871 charter established a typical presidential regime. Under the 1871 Constitution, the President of the Republic combined the main functions of State. The Legislative

Assembly, as a consequence of the excessive concentration of powers in the President, played a secondary role. Effectively, the Congress-as the Legislative Assembly was called under that Constitution-became, except in certain superficial aspects, totally dependent on the Executive. Moreover, the municipalities lacked all independence and electoral functions were also exercised by the President.

75. In short, the 1871 Constitution conferred excessive power on the President, with the result that Costa Rican democracy was constantly dogged by compromise. This concentration of political power in the President of the Republic allowed an individualist conception of public duty to emerge - an exaggerated type of egoism.

2. In the draft submitted by the Governing Committee

76. The Founding Committee of the II Republic appointed a group of experts to produce a draft Constitution intended to serve as the basis for discussion by the Constituent Assembly in 1949. The text prepared by the drafting committee was rejected by the Conservative majority among the members, and so the Social Democrat deputies adopted the tactic of submitting the draft under separate motions, article by article. In this way they succeeded in modernizing the existing 1871 Constitution by introducing a number of new institutions such as the civil service and the Office of the Comptroller-General of the Republic, which were independent bodies. Subsequent debates gave rise to a third solution which was neither the traditional presidentialism of the 1871 political constitution nor the semi-parliamentary regime advocated in the draft proposed by the Founding Committee. The Constitution now in force is thus, like any political charter, the product of compromise between the dominant political forces at the time of its promulgation.

3. In the Constitution of 1949

77. The majority of Constituent Assembly members were not in favour of establishing a semi-parliamentary regime, considering it to be unsuited to political conditions in Costa Rica. Nonetheless, the members did recognize the need for the Legislative Power to take on new authority enabling it to break with its historical role under the constitution and achieve parity with the Executive Power. The final text of the current Constitution was thus the product of compromise among the main political players, namely the conservative majority embodied by the National Unity Party, which dominated the Constituent Assembly, and the rising social democratic movement, which advocated a more flexible system of government that took greater account of the basic rights of citizens.

78. The main characteristics of the presidential regime are:

(a) The President and deputies are elected by means of popular suffrage (arts. 105 and 130 of the Constitution);

(b) The President of the Republic is simultaneously head of State and the Executive Power (arts. 130 and 139);

(c) The appointment and removal of ministers is the exclusive and discretionary power of the President of the Republic (art. 139);

(d) The office of minister is incompatible with that of deputy (art. 111);

(e) The Assembly may not take votes of censure against the President of the Republic, and he may not dissolve the legislative body without notice (doctrine of arts. 148 and 149);

(f) Ministers are not politically responsible to the Legislative Assembly;

(g) The censure referred to in article 121, subsection 24, is not of a moral nature;

(h) Power to initiate State policy still rests with the President of the Republic, who has exclusive power to enact laws during special sessions (art. 118). He also prepares the budget and only he may submit amendments (art. 176 and seq);

(i) The officials who assist the President are designated as ministers, as in parliamentary systems (arts. 140 and 146);

(j) The decrees, resolutions and orders of the Executive Power require the signatures of both the President and the appropriate minister (art. 146);

(k) A collegiate body exists, in imitation of the cabinet under parliamentary regimes, called the Council of Government, which has its own political powers (art. 147);

(l) Ministers are subject to interpellation on the part of the Legislative Assembly and to censure (art. 121, subparagraph 24). However, censure does not imply political responsibility on their part.

79. Costa Rica's political system is basically presidential, with certain parliamentary characteristics.

B. Powers of the State

1. Concept of an authority

80. An authority is a person or group of persons exercising public power. It follows from this definition that the following elements are integral to the notion of an authority:

(a) The incumbent, namely the official through whom the authority's powers are exercised;

(b) The office (public power). What distinguishes the authority is the exercise of public power (legislative, administrative, jurisdictional, governmental).

Each authority assumes a share of power delimited by jurisdiction, which is the measure of the number of powers assigned to the authority.

81. State authorities may be found, from the organizational standpoint, under various classifications.

2. State power

82. It seems appropriate to indicate how a group of authorities create so-called State powers. The powers may be defined as a group of authorities combined in a major organizational unit of the State, and which perform characteristic, but not exclusive, duties. Clearly, in the modern world no single power can perform duties exclusively, without some functional interdependence occurring between all of them. Accordingly, the tendency nowadays, rather than refer to separation of powers, is to use the term "distinction and collaboration of powers" (Biscaretti).

83. The traditional branches of power are executive, legislative and judicial, a concept reflected in article 9 of the Constitution. The tripartite division corresponds to a material classification of functions which in turn relates to the characteristic activities of each power (law, administrative act, jurisdictional act).

84. Consequently, the Supreme Electoral Tribunal cannot be turned into a fourth power, since its so-called "electoral function" has no substantive existence of its own. What does exist is an "electoral activity" exercised basically through administrative acts, which are also legislative and jurisdictional in nature, and are in conformity with the three traditional functions exercised preferentially by each of the powers (group of authorities) that make up the State.

85. The basic characteristic of the State powers is that they are totally independent of the exercise of their functions, and are not therefore legally subordinate to any other State body. Their relationship with the other powers is based on collaboration and mutual respect for the functions that have been conferred legally on each of them.

86. It follows from the foregoing that the principle of separation of powers not only guarantees each power exclusive exercise of the jurisdiction granted to it by the Constitution, but also provides the basis on which each power is forbidden to interfere in the affairs of other powers.

3. Constitutional authorities

87. Under Costa Rican legislation, these are defined as authorities established by constitutional norms and enjoying mutual independence. In Costa Rica, therefore, this applies to the three powers (legislative, executive and judicial), the Supreme Electoral Tribunal and the Office of the Comptroller-General of the Republic.

88. As in the case of powers, constitutional authorities enjoy a large degree of functional autonomy, which allows them to exercise their respective powers completely independent of other State authorities. Therefore, there is no possibility of any subordination or hierarchy arising between them in their relations, and only interdependence is possible.

89. Finally, there are institutions of constitutional relevance which, although established by constitutional norms, have no autonomy as they are attached to another constitutional authority. The following specific examples may be found in the Constitution: (a) the higher board of education (art. 81), attached to the Executive Power; (b) the budget office of the Ministry of Finance (art. 177), attached to the Executive Power; (c) the national treasury (art. 185), attached to the Executive Power; (d) the national wages board (art. 57), attached to the Executive Power; and (e) the civil registry (art. 104), which is located in the administrative hierarchy of the Supreme Electoral Tribunal.

90. These institutions enjoy a degree of autonomy sufficient for proper fulfilment of their functions, and therefore belong technically under the heading of constitutional decentralization.

C. Legislative power

91. This is the parliamentary institution in the Costa Rican system. It is unicameral, its functions being exercised by a Chamber known as the Legislative Assembly. The Assembly embodies one of the three powers of the Costa Rican State and has its origins in the people, for its members are chosen by means of elections held every four years on the first Sunday of February (arts. 105 and 107 of the Constitution).

92. The Assembly comprises 57 deputies, who work in a national capacity but are elected at provincial level. The deputies remain in post for four years and cannot be re-elected for a consecutive term; they must wait at least one term before standing for office again.

93. A deputy must be a citizen in the exercise of his rights, Costa Rican by birth, or by naturalization having resided in the country for ten years after naturalization, and must be at least twenty-one years of age. The term "citizen in the exercise of his rights" means that status must not have been suspended by a judgement on any of the grounds covered by article 91 of the Constitution.

(a) The status of deputies

94. A deputy is not liable for opinions expressed in the Assembly in the exercise of his duties, which includes work within the parliamentary precincts (plenary, committees) and outside. That privilege is granted solely and exclusively in order to protect the deputy in the exercise of his duties; for example, in the case of statements given to the press which might engender civil and criminal liability based on opinions expressed in the exercise of duty.

95. During sessions deputies cannot be arrested on civil grounds, except by authorization of the Assembly or if the deputy consents thereto. Since the elimination of bodily constraint from civil and commercial practice in 1989, the only way this could be achieved would be through the family courts on grounds of non-payment of alimony.

96. From the time he has been declared elected by the Supreme Electoral Tribunal and until he has completed his period of office, a deputy may not be deprived of his liberty on penal grounds, unless he has been previously

suspended by the Assembly. Such immunity does not apply, however, in a case of flagrante delicto or if the deputy waives it. Nevertheless, a deputy who has been taken in flagrante delicto will be freed if the Assembly so orders.

97. It should be emphasized that the deputy may only waive his immunity from detention, and not his exemption from penal liability, which in any case may be lifted by the Legislative Assembly through a qualified majority of two-thirds of its members.

98. A deputy who breaches any of these conditions loses his credentials. The same sanction applies if a deputy breaches these conditions in the exercise of ministerial duties. The Supreme Electoral Tribunal is responsible for declaring such a loss of credentials, being the constitutional institution that confers them.

(b) The legislative authorities and their functioning

99. The Assembly meets in San Jose. A two-thirds vote of its members is required to transfer its seat elsewhere or to suspend its sessions for a specified period (legislative recess).

100. The Assembly comprises the following organs: the plenary consisting of 57 members meeting together, the regular standing committees, which examine and advise on bills, and the special standing committees, which are appointed to specific tasks. Other parliamentary organs are the officers of the Assembly and its Presidency, and the meetings between the heads of factions and the President.

101. There are currently six regular standing committees: government and administration, economic affairs, budgetary matters, social affairs, legal affairs, agriculture and natural resources. Each comprises nine deputies, except the budget committee which has eleven members. The President plays no part in any of them.

102. There are four special standing committees: (a) honorary status, which examines proposals to have the Assembly declare an individual or institution a freeman or national hero; (b) books and documents, which decides on the Assembly's library acquisitions; (c) editing, which sees that formal motions concerning bills are included in debates and revises bills approved in initial debate prior to final editing; (d) international relations, which acts as official link between the Legislative Assembly, the Parliamentary Union, the Latin American Parliament and other parliaments world-wide.

103. All regular and special standing committees are formed by the President of the Assembly during the month in which the legislative period commences, for a period of one year.

104. There are also special committees which carry out tasks entrusted to them by the plenary in accordance with the provisions of article 121, subsection 23, of the Constitution. They consist of three deputies, none of whom may be a member of more than one special committee simultaneously.

105. Under Costa Rican legislation there are also mixed committees composed of deputies and members of the public. The latter are generally experts on matters relating to a legislative proposal who advise the deputies but may not vote during the Assembly's sessions.

106. The officers of the Assembly consist of a President and two secretaries. A vice President and two pro-secretaries are elected as deputies. They are elected annually at the opening of each legislative period on 1 May, and may be re-elected indefinitely.

107. Finally, under the Assembly's regulations an organ has been created which takes the form of meetings between the heads of factions and the officers of the Assembly. This body is primarily political in nature, and provides a means of communication between the political agencies in parliament (political parties) and the Assembly's decision-making organs (officers and President).

108. The Legislative Assembly cannot sit without quorum. Meetings are public except when, for very special reasons in the general interest, the plenary decides to meet in private on the basis of approval by not less than two-thirds of deputies present.

109. Each legislative period is divided into four. One legislative period includes all regular and special sessions held between 1 May and 30 April following.

110. Only the Executive Power may convoke special sessions. At such meetings no matters other than those stated in the decree of convocation may be taken up, except when the Assembly is obliged to appoint officials, or finds itself having to effect legal amendments in order to decide on matters submitted for its consideration.

111. Decisions of the Assembly are made by simple majority of the members present, except for those cases in which the Constitution requires a larger majority. For example, the suspension of guarantees and the creation of autonomous institutions require two-thirds of the entire membership of the Assembly, as stated in the Constitution.

(c) Functions of the legislative authority

112. The functions of the legislative authority in Costa Rica fall into five main categories: (a) legislation; (b) political control; (c) jurisdiction; (d) political direction; and (e) non-legislative activities of the Assembly, which cover a wide variety of activities. Historically, these comprise the duties par excellence of parliaments. They are strictly regulatory in nature, consisting of the approval of legal provisions for general application which are subordinate to the Constitution and international treaties.

113. Through its legislative function, Parliament produces written laws which initiate legislation, thereby activating or developing constitutional provisions and principles.

114. Under article 121, subsection 1, of the Constitution the Legislative Assembly enacts, amends, repeals and gives authentic interpretation to the laws,

except on electoral matters, whose authentic interpretation is the concern of the Supreme Electoral Tribunal. Other subsections of the same article specify the legislative powers of Costa Rica's parliamentary authority. Examples are subsection 11 (fixing the regular and special budgets of the Republic); subsection 13 (imposing national taxes and authorizing those of the municipalities); subsection 14 (ordering the sale or application to public use of property belonging to the nation); subsection 15 (approving or disapproving loans or similar agreements affecting the public credit, concluded by the executive branch); subsection 17 (fixing the content of the unit of currency and enacting laws on coinage, credit, weights and measures); subsection 18 (promoting the progress of the arts and sciences); subsection 19 (creating establishments for teaching); and subsection 20 (creating courts of justice).

115. The legal act that expresses the legislative function is the law. Such an act is the final product of a process to which the Assembly and the Executive Power contribute jointly. This is precisely one of those points of contact between the main holders of power at which the will of the State is expressed.

116. There are four stages in the legislative process. The introductory stage involves the submission of bills to the Legislative Assembly. During regular sessions, legislation may be initiated by individual deputies or by the Executive Power. During special sessions, the initiation of legislation is the prerogative of the Executive Power. The discussion stage comprises the bill's passage through a regular standing committee and a plenary debate. At the committee phase, both deputies who are members of the committee and other Assembly members may submit formal and substantive motions to amend the draft text under discussion. When the draft has been discussed and approved by the committee, it is passed on to the plenary together with the opinions expressed, whether positive or negative. The bill is then included in the plenary's agenda and subjected to three debates, each on a different day. Then comes the approval stage; bills must be approved at the third debate, by the majority required under the Constitution in each case. A legislative decree is then sent to the Executive Power for sanction. Finally comes the formulation stage, when the law is promulgated and published. In Costa Rica, however, promulgation and publication merge into one; executive sanction or, where appropriate, reconfirmation, establishes the law's validity, whereas publication brings it into effect. As a result, promulgation is considered an integral part of publication, for on its own it has no legal force in Costa Rican legislation, as is the case in other countries.

117. In modern times, the main function of Parliament has been shifting away from regulatory activities towards political or parliamentary control. Through this function, the Assembly checks that the other public powers, especially the Executive, act not only within the framework of the Constitution and the law, but also in the national interest.

118. Investigative committees are the most important and frequently used instrument in matters concerning political control. In accordance with article 121, subsection 23 of the Constitution, investigative committees may consider any matter entrusted to them by the Assembly and must submit the corresponding report within the required time limit. The committees have free access to all official agencies in conducting their investigations and may request any data

deemed necessary. They may receive any kind of evidence and call before them any person for purposes of interrogation.

119. The scope of these committees' investigations is limited by the powers reserved constitutionally for other fundamental authorities. For example, an investigative committee could not interfere with trials or matters pending before the Office of the Comptroller-General or the Supreme Electoral Tribunal. Another important limitation on their work is that they may not investigate matters declared to be State secrets or request private documents, which are actions prohibited by articles 24 and 30 of the Constitution. Their reports have no legal force, and are essentially recommendations of a political nature.

120. With regard to its jurisdictional function, in accordance with article 121, subsections 9 and 10, of the Constitution, the Assembly may lift the exemption from criminal proceedings enjoyed by members of the supreme powers, and order their suspension if they have been tried or found guilty. This is exclusively a jurisdictional function, for in cases of criminal accusation against members of the supreme powers the respective trial cannot proceed unless the Assembly has determined beforehand, by a two-thirds majority of all its members, that there are grounds for legal action.

(d) Participation by the Assembly in states of emergency

121. The Constitution provides for three kinds of state of emergency: suspension of constitutional rights and guarantees; authorization to declare a state of national defence and to make peace; and the right to control sections of the budget during periods of legislative recess.

122. The suspension of constitutional rights and guarantees may only be temporary and must only be decreed for reasons of urgent necessity. Such a suspension requires the approval of not less than two-thirds of all members of the Assembly and may be extended up to a maximum of thirty days. In addition, only the rights and guarantees specifically listed in article 121, subsection 7, of the Constitution may be suspended. The second scenario involves the exercise of a characteristically political power which may be defined as an activity established under the Constitution that is exercised by the Legislative Assembly or the Executive Power during an administrative recess, and which concerns the State and the community as a single entity. It cannot be challenged by contentious-administrative means, as it does not cause direct or immediate harm to the subjective rights or legitimate interests of private individuals.

123. In the third scenario, the power is granted to control sections of the budget during periods when the legislative body is in recess. The executive right in question entails automatic convocation of special sessions of the Assembly, which must approve or not the budgetary change.

124. In this way, the Assembly exercises political control over the Executive Power's handling of the indeterminate legal concepts "urgent or unforeseen necessity" and "war, internal upheaval or public disaster".

D. Executive Power

125. This body is constitutional, independent, political, supreme, representative and original, as clearly and consistently implied by articles 9 and 130 of the Constitution.

126. The Executive Power is a constitutional authority that exercises the political and administrative function of State. It is independent of the other State powers, and operates through a system of balances and counterbalances that preclude any hierarchical dependence among them.

127. The Costa Rican Executive is the political driving force in State activity, and thus constitutes in practice the basic arm of government. At the political level, the Executive takes the basic decisions of State, and in the legal sphere it is supreme among the other administrative bodies. Accordingly, the General Public Administration Act grants it authority to co-ordinate and direct all governmental and administrative tasks, comprising both central and decentralized areas of government.

1. Organization

128. The Executive is a complex entity comprising the following basic authorities: (a) the Presidency of the Republic; (b) ministers; (c) the Council of Government; (d) the Executive Power in the strict sense.

129. To be President or vice-President of the Republic a person must be a Costa Rican by birth and a citizen in the exercise of his rights, a layman, and over thirty years of age. The following may not be elected President or vice-President: (a) anyone who has served as President during any period, or a vice-president or person replacing him who has served during the major portion of a constitutional term; (b) a vice-president who has held such status during the twelve months preceding the election; (c) any descendant relative by consanguinity, or brother, of the person occupying the Presidency of the Republic at the time of the election; (d) anyone who has been a cabinet minister during the twelve months prior to the date of the election; (e) the titular magistrates of the Supreme Court of Justice, the alternate magistrates of the Supreme Electoral Tribunal, the Director of the Civil Register, directors or managers of the autonomous institutions, the Comptroller General and Assistant Comptroller General of the Republic.

130. The election for President and vice-President is held on the first Sunday in February of the year in which these officials are to be elected. The presidential term is four years. Two vice-Presidents are elected at the same time as the President; they replace him during his complete absence, in the order of their nomination.

131. Under article 139 of the Political Constitution, the President carries out an exclusive and personal political mandate. He is charged with co-ordinating the efforts of the nation as a whole. His exclusive powers, which are independent of other constitutional authorities, relate to three specific functions: discretion to appoint and remove cabinet ministers, and representing the nation officially. In addition, he must fulfil the two specific duties of presenting to the Legislative Assembly a report on his work at the start of each

annual legislative period, and requesting permission when he wishes to leave the country, except to go to any of the countries of Central America or to Panama.

132. The above-mentioned powers and duties, which are of a purely political nature, establish an authentic head of State who is granted the power of regulator over other holders of public power; this is reinforced by the terms of article 26 (c) and (d) of the General Public Administration Act, which require the President to settle disputes between decentralized bodies and central government and to resolve problems of jurisdiction arising among ministries.

2. Powers of ministers

133. Under article 130 of the Political Constitution, cabinet ministers are subordinate collaborators of the President; all instruments attributed to them by the Constitution must be signed jointly with the President in order to be valid.

134. According to articles 130, 139, 146 and 121, subsection 20, of the Constitution, ministries must be established through the law, which organizes them and regulates their functioning, while it is exclusively the President of the Republic who appoints ministers and determines their number.

135. Article 28 of the General Public Administration Act spells out the powers of ministers, without prejudice to the specific powers conferred on them by the constitutional law relating to their respective ministries.

3. Deputy Ministers

136. This post has its origins in legislative practice, and came into existence under the General Public Administration Act of 1979.

137. The powers of the deputy Minister, which are laid down in article 48 of the General Public Administration Act, basically involve exercising the functions that his place just below the top of the hierarchy requires: to direct and co-ordinate the ministry's internal and external activities, without prejudice to the minister's powers; to act as the focal point of communication in the ministry, in respect of both internal and external matters; to conduct the research and assemble the documentation necessary to the ministry's smooth functioning; and to delegate, take on, substitute or replace duties within the scope of the General Public Administration Act.

138. In practice, deputy Ministers share the political and administrative direction of the ministry, as the workload is such that the Minister could not possibly deal with every aspect of his responsibilities.

4. Council of Government

139. This comprises the President of the Republic, who acts as chairman, and cabinet ministers, either with or without portfolio. The latter may contribute, but have no vote.

140. Its jurisdiction is political in nature since, to some extent, its situation is that of a body more typically found in parliamentary systems which

has been introduced into a presidential regime, as has happened with the cabinet. In addition to these constitutional powers, article 29 of the General Public Administration Act grants the Council additional jurisdiction in various matters.

141. In principle, as indicated in the section on the Legislative Assembly, the Executive Power is an authentic co-legislator. In that capacity it may exercise the initiative to enact law, during regular and special sessions. The Executive Power has exclusive and discretional authority to convoke special sessions.

142. Legislative sanction completes the process of validating a law, while publication brings it into effect.

143. Another important aspect is the right to veto bills approved by the Assembly, which is granted under the terms of article 128 of the Constitution and constitutes, inter alia, an authentic political control over the activity of the legislative branch.

144. All these so-called governmental acts are exempt from contentious-administrative jurisdiction, as they do not injure subjective rights or legitimate interests directly, and therefore no legitimate subjects exist in respect of which action may be taken by such means.

145. With regard to political direction, the Executive Power's duties encompass the planning, control and co-ordination of policy and administration.

146. The Planning Act provides that planning is binding on the public sector, whereas it is merely indicative in respect of the private sector. The power of direction, which is expressed legally in the possibility to issue directives to both central and decentralized branches of government, is granted under article 100 of the General Public Administration Act. The legal instrument of direction is the directive, which is defined as "an administrative act which is binding in its scope, particularly in respect of the form and methods of the directed conduct, and issued in a climate of trust which assumes a wide margin of discretion in the institution or body being directed" (Ortiz, Eduardo).

147. Article 140, subsection 12, of the Constitution gives the Executive Power exclusive authority to direct international relations.

148. Liability applies only as long as the President and ministers meet in the exercise of their duty and for up to one year after their duties cease. Where crimes are concerned, however, naturally the length of the prescribed period is conditioned by the punishable act committed. The members of the Executive Power may incur civil, penal or administrative liability.

E. Judicial Power

149. The Judicial Power has its legal basis in articles 9 and 152 of the Constitution. Article 9 states:

> "The government of the Republic of Costa Rica is popular, representative, alternative and responsible. It is exercised by three distinct and independent branches: legislative, executive and judicial.

None of these branches may delegate the exercise of their proper functions. A Supreme Electoral Tribunal, with the rank and independence of the branches of government, has the exclusive and independent responsibility for the organization, direction and supervision of acts relating to suffrage, as well as for any other functions assigned by this Constitution and the laws."

Article 152 states: "The judicial power is exercised by the Supreme Court of Justice and by other courts established by law."

150. The principle of separation of powers is embodied in the Political Constitution. That independence is purely organizational, as in practice an interrelationship exists between the different branches of the Republic, with each retaining its own functions, which may not be delegated.

151. The independence of the Judicial Power is secure with respect to the Executive Power. Its relationship with the latter is collaborative, since legal decisions must be implemented, as necessary, by the police forces that answer to the Executive. Moreover, the courts are obliged to apply administrative acts issued by the Executive Power, in that they may not declare them invalid.

152. On the other hand, the Executive Power is subject to the courts, since its acts may be referred to them through contentious-administrative action on grounds of illegality, and also for reasons of unconstitutionality.

153. With regard to the Legislative Assembly, article 154 of the Constitution states that the courts, and thus judges, are subject only to the law, such that no other declaration by the legislative branch may be binding on judges. The legislative branch does place indirect restrictions on the Judicial Power, in the sense that it enjoys exclusive competence to approve the latter's budget, and to appoint magistrates.

154. The law must determine the jurisdiction, number and duration of the courts, their powers, the principles on which they base their acts, and the manner in which they may be held responsible.

155. With regard to bills concerning the organization and functioning of the Judicial Power, the Assembly must confer with the Supreme Court of Justice. A qualified majority of two-thirds of its entire membership is required in order to depart from the views of the Court.

156. The main limitation placed by the Assembly on the Judicial Power consists in constitutional control over the laws, allowing for the fact that the Constitutional Chamber has the power to declare a law invalid on grounds of formal or substantial defect.

157. By contrast, the Assembly may not change a judgement, as once a decision has become judgement at law, when it is not susceptible to any appeal within its jurisdiction, the Assembly is restrained from passing a law amending the judgement.

(a) Composition of the Judicial Power

158. The Judicial Power is exercised by the Supreme Court of Justice and by other courts established by law. The Supreme Court of Justice is the highest court of the judicial branch, and therefore of its administrative hierarchy.

159. The Supreme Court of Justice currently comprises four courts: the First Chamber tries civil, commercial and contentious-administrative cases, the Second Chamber tries cases relating to family law, labour law and residuary decisions (inheritance and bankruptcy); the Constitutional Chamber is concerned with constitutional jurisdiction.

160. The magistrates of the first three Chambers are elected by an absolute majority of votes, whereas the magistrates of the Constitutional Chamber are elected by a qualified majority of two-thirds of the total membership of the Assembly.

161. Each of the first three Chambers comprises five magistrates, and the Constitutional Chamber has seven. A president of the Supreme Court must be Costa Rican by birth.

(b) Organization and functioning of the Courts of Justice

162. In order to safeguard the independent organization and functioning of the courts of justice, the Constitution and the laws lay down a number of principles for them to follow.

163. The first of these is the guarantee of a natural judge, under article 35 of the Constitution, which provides that the name of the judge must be known and that all cases and all persons may be tried only by judges appointed in accordance with the Constitution.

164. Articles 121, subsection 20, and 152 of the Constitution grant the Legislative Power exclusive authority to create courts of justice; the Executive Power is prevented constitutionally from creating courts or determining their competence.

165. Under the principle of judges' impartiality, the judge must remain independent of other courts. Moreover, the judge must be placed in a position of effective impartiality with regard to the interests of the parties in dispute. Article 41 of the Constitution requires that justice must be prompt, thorough, and "in strict accordance with the laws".

166. In the same vein, article 154 of the Constitution states that the Judicial Power is subject only to the Constitution and the law. This guarantee is strengthened by article 155, according to which "No court may take cognizance of cases pending in another court." Each court has proper and exclusive competence to resolve matters submitted to its jurisdiction, without interference from other courts and judicial bodies. When judges breach this principle of impartiality, they pervert the course of justice and may be liable to penal or civil action.

167. Article 153 of the Constitution grants the Judicial Power the monopoly in solving all disputes that arise on different matters, without prejudice to the existence of administrative courts within the orbit of both the Executive Power and the Judicial Power, whose decisions do not constitute actual judgement at law, and may always be contested in the courts of justice. The only area outside the jurisdiction of the Judicial Power is electoral matters, on which decisions are taken exclusively by the Supreme Electoral Tribunal, in accordance with article 103 of the Constitution.

168. The most important function of the Judicial Power is to defend the Constitution and protect basic rights, and is the responsibility of the constitutional court.

(c) Constitutional jurisdiction

169. Constitutional supremacy implies three important legal consequences: (a) the legitimacy of the Constitution is uncontrollable, since there is no higher power than its content; (b) the provisions in the text of the Constitution are supreme, and prevail over all other types of provision, previous and subsequent; and (c) laws or acts which contradict the Constitution, or which are issued in contravention of its precepts, are invalid.

170. Constitutional guarantees are technical-legal devices that protect constitutional provisions, when they are breached or if there is a threat of infringement, by restoring the injured legal precept. They comprise all the procedural remedies that make up the established "constitutional jurisdiction of freedom".

171. The State authorities responsible for constitutional justice have the most important task in the modern State: to ensure that the constitutional precepts, and ultimately constitutional supremacy, exist as a daily reality within the framework of the legal system in which, by express mandate, the underlying community (civil society) has established them as its supreme guardians.

172. The reform of articles 10 and 48 of the Constitution in 1989 and the promulgation of the Constitutional Jurisdiction Act have produced a considerable change in the way constitutional jurisdiction is viewed and regulated nationwide. It is incumbent upon the Constitutional Chamber to decide on its own jurisdiction, which involves ensuring that matters relating to constitutional jurisdiction are not decided by other courts unqualified to deal with them, and that the jurisprudence maintains the consistency required in order to safeguard the principle of prompt recourse.

173. The Constitutional Jurisdiction Act also confirms the principle of prompt official trial, since the Chamber must act officially and with all speed so as to ensure that inertia by the parties cannot be invoked as a means of delaying trial.

174. There is no appeal against the decisions of the Constitutional Chamber - without prejudice, naturally, to a petition for liability. The judgements of the Chamber may only be clarified and additions made within three days of their announcement, if at the request of a party, and at any time officially.

175. The Chamber is subject only to the Constitution and to the law, and its jurisprudence and precedents are binding erga omnes, except on itself.

176. According to its article 1, the objective of the Constitutional Jurisdiction Act is "to regulate the constitutional court, whose purpose is to guarantee the supremacy of the rules and principles of the Constitution and those of the international or community law in force in the Republic, the uniform interpretation and application thereof, and the fundamental rights and freedoms embodied in the Constitution and in the international human rights instruments in force in Costa Rica". Article 2 states clearly that the following are the specific concern of the Constitutional Chamber: (a) to guarantee, by means of habeas corpus and amparo, the rights and freedoms enshrined in the Political Constitution and the human rights recognized in international law which are in force in Costa Rica; (b) to monitor the constitutionality of all laws and of acts subject to public law, and the conformity of the internal order with international or community law, by means of actions of unconstitutionality…; and (c) to resolve disputes concerning constitutional jurisdiction between the State powers, including the Supreme Electoral Tribunal, and disputes concerning constitutional jurisdiction between these powers and the Office of the Comptroller-General, municipalities, decentralized bodies and other persons of public law.

IV. GENERAL LEGAL FRAMEWORK FOR THE PROTECTION OF HUMAN RIGHTS

A. Basic rights

177. The Political Constitution establishes the basic rights of all persons, without distinction.

178. The right to life is guaranteed, and the death penalty does not exist in the Costa Rican legal system; no-one may be subjected to forced disappearance, torture, or to cruel, inhuman or degrading treatment or punishment. All people are born free and are equal before the law, and shall thus receive equal treatment from the authorities and enjoy the same rights, freedoms and opportunities, without discrimination on grounds of sex, race, national or family origin, language, religion or political opinion. They shall have the right to personal and family intimacy, to recognition of their legal person, and to inviolability of their correspondence. Freedom of worship, free expression and free circulation are guaranteed. Every person has the right to petition the authorities, out of general or personal interest, and to obtain prompt resolution. Work is a right and a social obligation which enjoys State protection. Freedom of education and training, and due process, are guaranteed. No-one may be disturbed in his person or his family, or reduced to prison, or detained, or have his home searched, without a written order issued by a competent legal authority. There is no imprisonment for debts, except those arising through alimony. The right to bring proceedings of habeas corpus and amparo is established. The rights of asylum and political participation are also recognized, inter alia.

179. The family, as the natural and basic element of society, has the right to special protection from the State. Mothers, children, the elderly and the sick are also entitled to this protection; all enjoy the same rights, equalities and

opportunities; the special rights of children, adolescents, senior citizens and the handicapped are recognized. Social security is guaranteed as a State obligation. Any child aged less than one year has the right to free care in all State-supported health facilities; the rights to work and to enjoy labour protection are guaranteed, as is the right to strike and to collective bargaining. Private property, the rights to intellectual property and use of State property, and authors' rights are guaranteed. Agriculture enjoys special protection from the State. The State, society and the family are responsible for education; education is compulsory and free. The right to free expression and the right of access to public documents are guaranteed.

B. Communal and environmental rights

180. The law regulates the quality control of goods and services made available to the public. All persons have the right to enjoy a healthy environment, and the State co-operates with other countries in protecting ecosystems.

C. The Judicial Power

1. Structure and functioning

181. The Judicial Power, the supreme power of the Republic, must ensure that the laws are respected and that justice is administered. Articles 9 and 152 of the Political Constitution define its legal basis. In addition, the Judicial Power is governed by the legal directives set forth in the Organization of Justice Act:

> Article 1 states: "In addition to the functions indicated in the Constitution, the judicial power shall hear civil, penal, juvenile penal, commercial, labour, contentious-administrative and civil financial, constitutional, family and agrarian cases, as well as any others which the law may provide; shall render final decisions thereon and execute the judgements pronounced, with the assistance of the public force if necessary."

182. The Judicial Power is subject only to the Political Constitution and the law, and the decisions rendered by it on matters within its competence impose no responsibilities other than those specifically set forth in legislation (art. 2).

183. The Judicial Power divides structurally into three different areas:

(a) Jurisdiction, which comprises the departments responsible for administrating justice, namely the Supreme Court of Justice, higher appeal courts, appeal courts, collegiate courts, courts of first instance and penal courts, lower courts and tribunals, petty sessions, and courts concerned with summary proceedings and alimony. At their head is the Supreme Court of Justice, which is the highest court in the country. All courts and tribunals are subordinate to it. Its organizational structure reflects three factors: the nature of the matters to be decided, the territory in which events occur, and their level of importance (amount of money involved), and these determine which department handles the case. Territorial jurisdiction and level of importance are both determined by the Supreme Court of Justice. The Supreme Court of

Justice, or Full Court, comprises 22 magistrates distributed as follows: five in each of the three courts of appeal and seven in the constitutional court, appointed by the Legislative Assembly for eight year terms;

(b) Auxiliary justice, which includes those bodies that collaborate in the administration of justice, namely legal research institutes, government ministries, ombudsmen, law schools, the centre for electronic information on jurisprudence, archives and record offices;

(c) Administration, which supports the normal functioning of the institution and comprises the Higher Council, charged with administering the institution's resources, supported by various departments under an executive board: personnel, supplies, general services, and finance and accounts.

2. Supreme Court of Justice

(a) The Chambers of the Supreme Court

184. These courts hear the following cases:

(a) Appeals and reviews relating to contentious-administrative, civil, commercial and agricultural matters involving sums greater than 750,000 colones;

(b) Proceedings concerning sentences passed by foreign courts which are to be completed in accordance with the treaties and laws in force;

(c) Questions of jurisdiction arising between higher civil, agrarian and contentious-administrative courts.

185. Cases are distributed among the courts mainly on the basis of subject matter. If there is no law that can be applied to regulate work distribution or court jurisdiction, the Supreme Court decides on the matter and publishes its verdict in the Legal Bulletin.

186. The First Chamber hears appeals and reviews, conducted at simple, short trials as required by law, on civil, commercial and contentious-administrative matters, with the exception of proceedings involving family law and residuary judgements; cases concerning the completion of sentences passed by foreign courts in accordance with the treaties and laws in force and others of exequatur; cases involving jurisdiction among the higher civil courts, or that arise between them and other courts when the latter have anticipated cognizance of a matter; cases concerning jurisdiction among civil courts which pertain to the jurisdiction of the various higher courts, and involving ordinary civil or commercial trials, with the exception of residuary judgements and matters relating to the family and labour law; cases of third instance involving agrarian jurisdiction, when the action concerns compliance with the law; disputes involving any type of court and higher contentious-administrative courts; jurisdictional disputes that arise in connection with the judicial and administrative authorities, and other matters that the law may determine whose nature makes them unsuitable for the other chambers of the Supreme Court.

187. The Second Chamber hears:

(a) Appeals and reviews, conducted at simple, short trials as required by law, which relate to family or inheritance law and residuary judgements or involve execution of sentence following an action taken outside the cognizance of the First Chamber. The amount involved must exceed 750,000 colones;

(b) Cases of third instance relating to labour law, when the action concerns compliance with the law;

(c) Civil liability actions brought against judges belonging to collegiate courts of any kind, except lower labour tribunals;

(d) Issues of jurisdiction arising in matters relating to labour law, when other courts in this field are called upon to resolve them. Jurisdiction among civil judges belonging to divisions of the collegiate courts located in different territories, on any matter which the First Chamber is not required to resolve.

188. The Third Chamber hears: (a) appeals on criminal matters which do not fall within the competence of the Criminal Court of Appeal, in respect of crimes carrying a penalty of more than five years imprisonment; (b) Criminal cases brought against members of the supreme powers and other comparable officials; (c) Other criminal matters, such as the laws may require.

189. The main task of the Constitutional Chamber is to protect the fundamental rights established by the Political Constitution and the other international legal instruments ratified by Costa Rica, and to ensure their full implementation.

190. It hears proceedings involving habeas corpus and amparo, actions of unconstitutionality, constitutional issues and jurisdictional disputes arising between the powers of State, including the Supreme Electoral Tribunal, and disputes of constitutional jurisdiction between them and the Office of the Comptroller-General, municipalities, decentralized bodies and other persons of public law.

191. Any person claiming rights may, alone or through another person, have recourse to the Constitutional Chamber at any time, through proceedings of habeas corpus and amparo. Only in cases of unconstitutionality are the services of a lawyer required. Legal opinions may only be formulated by the authorities and legislative opinions by deputies.

(b) Remedy of amparo

192. Proceedings of amparo provide means of seeking redress from the agency of constitutional jurisdiction with regard to injury or threat of injury to basic rights and constitutional guarantees, except those relating to personal liberty and integrity. Article 29 of the Constitutional Jurisdiction Act (CJA) states: "The remedy of amparo guarantees the fundamental rights and freedoms with which the Act is concerned, except for those protected by habeas corpus. It may be brought against any provision, agreement or decision and, in general terms, against any action, omission or simple material act not based on a valid

administrative function of public servants or public bodies, which has violated is violating or threatens to violate any one of those rights. Proceedings of amparo may be brought not only against arbitrary acts but also against acts and omissions based on wrongly interpreted or improperly applied rules."

193. Proceedings of amparo may also be brought against "…acts or omissions by subjects of private law when they are acting or should be acting in the exercise of public functions or powers or when they find themselves, de jure or de facto, in a position of power against which the ordinary legal remedies are insufficient or too slow to guarantee the fundamental rights and freedoms…" (art. 57, CJA).

194. According to article 38 of the LJC, "The proceedings of amparo shall state, in the clearest terms, the act or omission giving rise to their invocation, the right which is considered violated or under threat, the name of the public servant or public body responsible for the threat or injury, and proof of the charge. It is not essential to cite the constitutional rule infringed, provided that the injured right is clearly identified, except when an international instrument is being invoked. The proceedings are not subject to other formalities and shall not require authentication. They may be introduced through a petition, telegram or other means of written communication. If telegraphic means are used, they shall be exempt from charges."

195. Any person may bring proceedings of amparo (art. 35, CJA), and an amparo action may be brought at any time as long as the violation, threat, disruption or restriction persists, and for two months after its direct effects on the injured party have totally ceased (art. 35, CJA).

196. Likewise, article 1 of the same Act states:

> "The present Act is designed to regulate the constitutional court, whose purpose is to guarantee the supremacy of the rules and principles of the Constitution and those of the international or community law in force in the Republic, the uniform interpretation and application thereof, and the fundamental rights and freedoms embodied in the Constitution and in the international human rights instruments in force in Costa Rica."

In practice, amparo in Costa Rica is a direct action that does not require any prior case, either legal or administrative.

197. The CJA allows a period of two months in which to bring the action, taken from the time when the violation occurred and the injured party became aware of it, or from the time the violation ceased, provided the effects persist and it is not a question of "purely property rights" (art. 35, CJA).

198. Article 27 of the Constitution establishes the right or freedom to petition "any public official or official body and the right to receive prompt redress." Article 32 is confined simply to defining "prompt redress": it must be given within the legal time limit; failing that, within ten working days.

199. Amparo offers a defence not only of simple petitions (applications without legal time limit). It also protects any petition for which redress is not made in good time, since neither the Administration nor any public official has the

right to silence, which is a violation of the principle of administrative justice.

200. It should be emphasized that amparo is an extraordinary and optional remedy. Practically all amparo cases can be reviewed by normal legal means, hence there is nothing to prevent simultaneous recourse to both channels. Also, establishment of amparo does not suspend legal principle or alter the time limit regarding action being taken under ordinary law.

201. The Constitutional Chamber has ruled that contentious-administrative courts are competent to judge acts that violate fundamental rights and freedoms (Resolution 3035-96), a protection which may be offered both by ordinary legal means and by injunction, against "simple material actions" (art. 357 of the General Public Administration Act).

202. Naturally, once a favourable ruling on amparo has been pronounced, it prevails over ordinary jurisdiction.

(c) Sentence

203. A verdict in favour of the applicant restores or guarantees enjoyment of the violated right (art. 49, CJA). It produces judgement at law. The verdict in favour "entails in principle" liability for damages and costs, whose amount is paid off through enforcement proceedings in an ordinary court. It should be noted that the verdict is given without full trial and without the possibility of appeal (art. 51, CJA).

204. If the Constitutional Chamber considers that the offending official has committed serious fraud or negligence, it shall decide sentence jointly with the public body (art. 51, CJA), provided it has been possible to grant him a personal hearing. Failure to sentence in person does not prejudge whether there is actually liability under articles 203 et seq. of the General Public Administration Act. A sentence of damages may thus be given even when a claim has been settled out of court, after the official has been notified of appeal (art. 52, CJA).

205. A verdict against the applicant does not produce material judgement at law (art. 52, CJA). It cannot produce a sentence of damages based on the stay of effects mentioned above; it may only lead to a sentence of costs if the recourse is considered "hasty".

206. The CJA does not define a time limit for pronouncing sentence in amparo cases. However, the general principles relating to official conduct and promptness apply (art. 8), except that these cases are to be handled "on a priority basis", with priority over habeas corpus cases (art. 39).

207. Only additions to or clarifications of a decision are possible (art. 121, CJA). Even though the rule is very clear, the Chamber may admit "appeals" intended to correct flagrant errors of fact or of law, in truly exceptional cases.

208. The Chamber executes its own decisions, except in the above-mentioned cases where pecuniary responsibilities are concerned (art. 56).

(d) Habeas corpus

209. Given the nature of the rights it protects, habeas corpus is now the most important procedural institution under the Constitution, in the sense that we cannot conceive of a "Constitutional State of Law" which does not bring together the procedural resources sufficient to ensure its flexible and effective implementation.

210. This remedy is intended to protect the fundamental rights of greatest importance, namely personal freedom and movement. To deprive a person of either of these would be to prevent him exercising the other rights to which he is entitled. The reason for the existence of habeas corpus is thus to prevent and suppress any illegal infringement of a person's freedom, regardless of its origin.

211. It has thus come to be regarded as the bedrock of procedural protection of basic rights. It is the specialized procedure through which the authority having constitutional jurisdiction responds to a claim of amparo arising from an instance of illegal detention. In that regard, article 15 of the Constitutional Jurisdiction Act states: "Habeas corpus is designed to guarantee personal freedom and integrity against the acts or omissions of authorities of any kind, including the judicial authorities, and against threats to such freedom and any unlawful disruption or restriction of the right to move about in the Republic and the right of free residence therein, as well as the freedom of entry and exit."

212. Article 16 of the same Act adds: "If other violations relating to personal freedom in any of its forms are cited under habeas corpus , and the facts relate to an act deemed illegal its motive or intent, this remedy may also be used to resolve such violations."

213. Any person may bring these proceedings by telegram or by any other means of written communication. If telegraphic means are used, they are free of charge, in accordance with article 18 of the CJA.

214. These proceedings, which require no formalities, are brought before the Constitutional Chamber under the supervision of a president or examining magistrate (art. 17, CJA). The Constitutional Chamber is available round the clock for such purposes.

215. The remedy of habeas corpus is no more than a consequence of the State's obligation to provide effective recourse against any violation of internationally recognized human rights. That guarantee is enshrined in article 8 of the Universal Declaration of Human Rights, which recognizes the right of everyone to "an effective remedy by the competent national tribunals for acts violating their fundamental rights…"

216. It is important to emphasize the contribution made by international human rights law in helping to establish the political will needed to place procedural guarantees of protection at the heart of national legislation, one of those being habeas corpus. An awareness has been created that it is not sufficient simply to embody these rights in constitutional texts, so that they are now

respected by the public authorities and by the general public. As a result, in concrete terms procedural action offers the best means of defence.

217. However, the progress made at the national level is fundamentally dependent on two factors: the value assigned by each State-within its hierarchy of law-making bodies and under its constitutional system-to human rights instruments, and the conditions in which its Judicial Power functions.

218. In Costa Rica, under article 7 of the Constitution international instruments are taken into account in judgements on constitutionality, and thus any legislative provision that attempts to eliminate or restrict this remedy would be deemed an unconstitutional breach of that article, under the terms expressed in the Constitutional Jurisdiction Act (Law No. 7135 of 11 October, 1989).

(e) Actions of unconstitutionality

219. These are genuinely independent claims brought against laws and other general provisions which infringe, by act or omission, a constitutional rule or principle, and against inertia, omission and abstention on the part of public bodies (art. 73, CJA).

220. Article 75 of the CJA states: "In order to bring an action of unconstitutionality, there must be a case awaiting decision of the courts which involves either habeas corpus or amparo or is in the process of exhausting administrative remedy, and in which unconstitutionality is invoked as a reasonable means of defending the right or interest considered to have been damaged. No pending prior case is necessary if the nature of the matter is such that no direct harm to an individual is involved, or if it is a question of defending diverse interests or the interests of the community as a whole. Nor shall it be required by the Comptroller General of the Republic, the Procurator General of the Republic, the Attorney General of the Republic or the Ombudsman."

221. Since the last century, the Costa Rican State has promoted laws aimed at ensuring equality between men and women in many spheres. Such is the case of the legal regulations permitting women to own, contract, sell and pawn in their own right, and those which made education free and compulsory for both sexes. Co-education was introduced in 1902. These advances were achieved partly through women's contribution to the pioneering and reform of laws, which frequently called for resolute campaigning on their part, examples being the right to take the school leaving examination, to enter university, to practise law and to become a notary.

222. A very important aspect of these reforms and the newly approved legislation are the actions brought in implementation of the Convention on Human Rights and other international and regional treaties ratified by Costa Rica.

3. Other courts

223. The Law provides for the creation of appeal courts to deal with all matters; at present they operate only in the penal field.

224. The Higher Court of Appeal hears:

(a) Appeals and review cases on matters concerning cognizance of a judge's ruling made in a court of judgement;

(b) Appeals against decisions made by judges in a court of judgement, when the law grants grounds for proceedings;

(c) Appeals in respect of impediments, apologies and challenges involving court members and their deputies;

(d) Jurisdictional disputes which cannot be resolved in courts of judgement;

(e) Disputes that arise between petty sessional courts and courts of judgement.

225. There are different types of court classified, according to the matters they are called upon to resolve, as penal, civil, labour, family, contentious-administrative, agrarian, juvenile penal, or mixed (which operate only in provincial areas and rule on various matters). The courts may enjoy competence and jurisdiction in two or more cantons of different provinces, in one or more provinces, and across the whole country.

4. Lower courts

226. There are different kinds of courts of first instance and penal courts classified, according to the cases they hear, as civil, penal, contentious-administrative and civil financial, family, labour, agrarian, and juvenile penal, as well as others such as the law may determine.

227. Small claims courts and petty sessional courts operate in all cantons of the country, handling cases involving sums not greater than 300,000 colones for which the proceedings are straightforward. The categories are civil, contentious-administrative, traffic, minor infringements and alimony.

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BHUTAN

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I. THE LAND AND PEOPLE

1. Bhutan is bordered to the north by the Tibetan Autonomous Region of China and by the Indian states of Sikkim, West Bengal, Assam and Arunachal Pradesh to the west, south and east. With an area of approximately 46,500 square kilometres, Bhutan has a north-south distance of 150 km and an east-west distance of 300 km. The terrain is among the most rugged and mountainous in the world, as much of the country lies within the Himalayas. The land rises from an elevation of about 100 metres above sea level in the south to more than 7,550 m above sea level in the north. Flat land is limited to a few relatively broad north-south running river valleys and small areas below the foothills, along the Indian border.

2. The country can be divided into three climatic zones. The Southern Belt, rising to 1,500 m has a hot, humid climate with temperatures between 15 and 30 degrees centigrade and annual rainfall ranging between 2,500 mm and 5,000 mm. The inner Himalayan Region, ranging from 1,500 to 3,000 m, has a temperate climate with an average annual precipitation of approximately 1,000 mm. The High Northern Region, ranging from 3,000 to 7,000 m, has a severe alpine climate with an annual precipitation of around 400 mm.

3. The history of Bhutan, as indicated by stone implements found in the country, shows that it was inhabited as early as 200-1500 B.C. However, information on the history of the country is documented only since the seventh century when two lhakhangs (monasteries) were built, namely the Kyichu Lhakhang in Paro valley and Jambay Lhakhang in Bumthang valley. This marked the advent of Buddhism in Bhutan. In the eighth century, Guru Rimpoche (Padmasambava, the Lotus born Precious Teacher) brought Tantric Buddhism to Bhutan.

4. Bhutan has been an independent nation throughout its history. However, it was not until the seventeenth century that the country was politically unified by Shabdrung Ngawang Namgyal (1594-1652 A.D.). He established a theocracy in 1652 and gave Bhutan an administrative system and a code of law. In 1907, the theocracy established by Shabdrung Ngawang Namgyal ended when the Trongsa Penlop, Ugyen Wangchuck (1862-1926) was elected as the first king of Bhutan by popular consensus. The establishment of the institution of hereditary monarchy in 1907 brought peace, stability and progress to the country.

5. As in all countries in the Himalayas, there is no distinct separation between the material and spiritual in the way people lead their lives. Buddhism has played a key role in the moulding of a distinct Bhutanese culture: art, drama, music and dance all have a religious foundation and are living manifestations of an ancient tradition. The aspiration towards enlightenment and the belief in the innate goodness of human beings are widely shared among Bhutanese. Buddhist precepts of compassion, tolerance and non-violence are integral to the Bhutanese way of life and although Bhutan is no longer a theocracy, monks still play an important role and have an honoured place in society.

6. The Lhotsampas (Southern Bhutanese of Nepali origin) are mainly Hindus who arrived in Bhutan during the first half of the twentieth century. Today they comprise nearly 25 per cent of

the country's population and enjoy equal opportunities and representation at all levels of society. Hinduism and Buddhism have the same roots and, therefore, share many similarities. The Vajrayana form of Mahayana Buddhism practised in Bhutan has all the major Hindu gods and goddesses in its pantheon of deities.

7. Most of the population is concentrated in the valleys while large areas at higher altitudes in the north of the country are virtually empty except for nomadic herders. Most Bhutanese still live in an extended family system or maintain strong links with their rural families. The average size of the household or family is estimated to be 5.6. The number of houses per village varies from 2 to 100 with an average of 43. Approximately 85 per cent of the population derive a living from agriculture and other traditional activities in the rural sector. The main city is the capital, Thimphu, with approximately 35,000 people. The other main urban settlements are Gelephu, Phuentsholing and Samdrupjongkhar, all of them in the south.

8. The pattern of economic activities in Bhutan has been largely determined by the country's self-imposed isolation and late decision to embark on planned development. Subsistence agriculture is supplemented by multiple utilization of forest areas, livestock rearing and by cottage industries based on traditional handicrafts. Widespread use of money only commenced during the 1960s with the expansion of trade with India and the inflow of development assistance. Since then the monetized sector has grown significantly in parallel with continued economic and social developments, improvements in transport and communication facilities and greater urbanization.

9. In formulating national goals and policies, emphasis is placed not just on material development but also on other less quantifiable goals, such as the spiritual and emotional well-being of the people and the preservation of Bhutan's cultural heritage and its rich and varied natural resources. During the period 1985-1995, the Bhutanese economy grew at the rate of 6.8 per cent per annum, doubling the real GDP to Nu 2,946 million from Nu 1,519.8 million. Efforts have been made to channel this economic growth towards ensuring universal access to basic health, education and essential services.

10. Besides the long-term constraints imposed by being landlocked, by having to cope with the extremely difficult topography and geological factors, and in moving from subsistence to an open modern economy in less than one generation, the short- to medium-term problems of managing development with a shortage of resources have still to be overcome. In this context, the Government continues to place top priority on human development and capacity building and the protection and preservation of the environment. Further advances in education and health services, increased involvement of women in development efforts as decision-makers and representatives of the people at the grass-roots level, increasing the effectiveness of the small civil service and enhanced capacity building through continued human resource development are all issues which receive top priority within government policy, with the over-arching goal of decentralization and active people's participation through all sectors of development, including the private sector.

II. GENERAL POLITICAL STRUCTURE

A. Monarchy

11. Till the beginning of the twentieth century, Bhutan was ruled by the dual system of administration known as Chhosi, established by Shabdrung Ngawang Namgyal in 1651. Under this system, Shabdrung Ngawang Namgyal founded the office of the Druk Desi (temporal ruler) to look after the temporal administration of the country and Je Khenpo (spiritual head) to look after religious affairs. This system of government prevailed for over two centuries. However, by the second half of the nineteenth century, the elective nature of the post of Druk Desi and frequent disputes over the instalment of the reincarnation of the Shabdrung brought internal strife and instability to the country. The desire of the people for political stability and internal peace therefore led to the establishment of a hereditary monarchy.

12. The year 1907 marked the beginning of a new era in the history of Bhutan. On 17 December of that year, the Monk Body, the State Councillors, the Chillahs (governors) of all the districts, and the representatives of the people met at Punakha and elected the Trongsa Penlop (Governor of Trongsa) Ugyen Wangchuck as the first hereditary King of Bhutan. With his outstanding qualities of leadership and statesmanship he was undoubtedly Bhutan's man of destiny. By uniting the country and establishing a central authority, he brought peace and stability to the country and laid the foundation for the emergence of modern Bhutan.

13. Since the establishment of the monarchy in 1907, there have been four hereditary kings. King Ugyen Wangchuck reigned from 1907 to 1926, King Jigme Wangchuck from 1926 to 1952 and King Jigme Dorji Wangchuck from 1952 to 1972. The present king, His Majesty King Jigme Singye Wangchuck, ascended the throne in 1972.

B. Organization of Government

14. The three main organs of government are the National Assembly, the Judiciary and the Council of Ministers.

1. National Assembly

15. The National Assembly is the legislative organ of the Government. It was established in 1953 by the third King, Jigme Dorji Wangchuck, who desired to develop political consciousness among his people and give them a greater say in the running of the country. The main functions of the National Assembly are to:

(a) Enact laws;

(b) Elect ministers; and

(c) Deliberate on all matters of national importance.

16. The National Assembly normally meets once a year but can be convened whenever necessary to discuss issues of national importance. It consists of 150 members.

comprising 105 elected representatives of the people, 10 representatives of the Monk Body, 29 nominated representatives of the Government and 6 elected ministers. All elected members serve for a term of three years while the elected ministers serve for a term of five years. The Speaker and the Deputy Speaker are elected by the National Assembly from amongst its members.

17. Till 1968, all legislative bills passed by the Assembly required the consent of the King before becoming law. In the 1968 autumn session, the King voluntarily relinquished his right of vetoing bills, thereby making the Assembly a sovereign body. No decisions of the Assembly require Royal assent before becoming operative. During its seventy-sixth session in 1998, the National Assembly was empowered by a Royal Edict to move a vote of confidence in the King.

2. Judiciary

18. The first set of codified laws was promulgated by Shabdrung Ngawang Namgyel in 1652 A.D. Later, the thirteenth temporal ruler Deb Choegyal Sherub Wangchuck (1744-1764) formulated a complete set of laws. The first King of the Wangchuck dynasty, His Majesty Ugyen Wangchuck, amended and improved these laws.

19. Many important laws were enacted during the reign of the third King, His Majesty Jigme Dorji Wangchuck. On his initiative, the first comprehensive codified laws were enacted by the National Assembly during several sessions in the 1950s. These laws, contained in the "General Law Book" (Thrimzhung Chhenpo) include almost all categories of criminal offences and their penalties. Other important laws enacted by the National Assembly during the third King's reign were the Nationality Law of Bhutan, 1958, The Forest Act, 1969, the Army Act, 1971, and the National Flag Act, 1972.

20. By far the largest number of laws were enacted by the National Assembly during the reign of the present King, His Majesty Jigme Singye Wangchuck. Most of these were enacted to respond effectively to the changing needs of a rapidly modernizing nation.

21. A proposal to enact new laws or revise existing ones can come from any quarter through the proper channel. Such a proposal may be submitted either directly to the National Assembly through its members or to the Council of Ministers through the respective line Ministry. In either case, a committee appointed by the receiving body submits its draft to the Council which then forwards it to the National Assembly members through the Secretariat to obtain the views of the people. The draft is thoroughly debated during the following session of the National Assembly before being formally enacted.

22. The supreme authority in all matters of law and justice in the kingdom is His Majesty the King. He is the final court of appeal with powers to commute sentences and grant pardon. The judiciary comprises the Thrimkhang Gongma (High Court), which has both appellate and a few original jurisdictions, the Dzongkhag Thrimkhang (District Court) and the Dungkhag Thrimkhang (Sub-District Court). The High Court consists of the Chief Justice and seven other judges. The thrimpons (judges) of the courts are assisted by Rabjams (assistant judges). The chimi (people's representative in the National Assembly), gup (village headman) and barmi

(negotiator/arbitrator who is well versed in the law) have some judicial functions, particularly with regard to effecting compromises between parties and thus saving them the expenses of going to court

23 The Royal Advisory Council also has a role to play in the dispensation of justice in Bhutan The Council reviews cases of litigants who are not satisfied with the decisions of the High Court and have appealed to the King The cases are then jointly reviewed by the High Court and the Royal Advisory Council

24 In the Bhutanese legal system, the accused in criminal cases are allowed to appoint jabmis (a legal representative/counsel well versed in law) for their defence The institution of jabmis has been gaining prominence over the past few years with the judiciary having conducted training for jabmis during the period 1995-1997 Today, there are 166 jabmis in Bhutan, several of whom have set up their own private legal practice

25 The codified and enacted laws of the National Assembly, referred to as the "General Law Book" separated the judiciary from the executive and legislative branches of government The process came to a final culmination when the High Court was established in 1968 Later, a separate judicial cadre as distinct from the civil service cadre was established to safeguard the independence of the judiciary Specific provisions have been made in the law to prevent the executive from interfering with the judiciary

26 The independence of judges has been ensured by giving them security of tenure (they can only be removed by the King, either on his own volition or on the recommendation of the National Assembly, for misconduct or incompetence) and by giving them adequate salaries and retirement benefits to put them beyond venal temptations

27 Certain principles of Western jurisprudence such as habeas corpus, and the "doctrine of precedent" have been adopted whenever they have been found relevant Precedent is not disregarded in toto because certainty and uniformity are the essential elements of justice, but on the basis of the "relaxed doctrine of precedent" it is not obligatory for judges to follow decisions of other courts in similar cases Judges in Bhutan, while giving weight to past decisions, have the freedom to take decisions which they consider just

28 In order to strengthen the judiciary in the kingdom, annual conferences of judges are held in Thimphu during which finer points of the law requiring clarification are discussed These annual meetings have also contributed to the modernization of the judicial system in terms of training, study tours and computerization of records Candidates have been sent abroad for legal training and degree courses in law Every effort is made by the High Court to ensure that justice is dispensed speedily and impartially by all the courts in the kingdom Justice in Bhutanese courts is substantive justice, which cannot be overshadowed by technicalities and external forms

3 Council of Ministers

29 Bhutan took a major step in the direction of a modernized administrative system in 1968 when the National Assembly, at the request of the King, approved the formation of a Council of

Ministers. The Council of Ministers, which is the executive organ of government, is an important decision-making body of the Government. It is also responsible for the running of the Government and implementation of all National Assembly resolutions.

30. During the seventy-sixth session of the National Assembly, held from 29 June to 30 July 1998, His Majesty the King introduced historic changes in the governance of the country. These changes were far-reaching and further deepened the process of democratization and people's participation initiated by His Majesty the King ever since he ascended the throne. In a royal edict issued to the National Assembly, His Majesty proposed that all cabinet ministers should henceforth be elected by the National Assembly and that the National Assembly should have a mechanism to register a vote of confidence in His Majesty the King. After much debate, the National Assembly approved the changes. In accordance with these changes, His Majesty the King no longer presides over the Council of Ministers, which has been vested with full executive powers. As a result, the Chairman of the Council is now the Head of Government. The Council of Ministers only has to keep the King fully informed on all matters that concern the security and sovereignty of the country.

31. In addition, the following bodies play important roles in the development of the country.

4. Royal Advisory Council

32. The Royal Advisory Council, which was established in 1965, consists of nine members, six representatives of the people, two representing the Monk Body and one nominee of the government. They hold office for three years except for the representatives of the Monk Body who hold office for one year.

33. The main functions of the body are:

To advise the King and the Council of Ministers on all matters of national importance;

To promote the welfare of the people and the national interests of the kingdom;

To develop friendly and harmonious relations between the Government and the people; and

To ensure that the laws and resolutions passed by the National Assembly are faithfully implemented by the Government and people.

5. Planning Commission

34. The Planning Commission, an independent body, was established in 1972. The broad functions of the Planning Commission are:

To direct and coordinate the formulation of all development plans;

To issue broad policy directives and determine development priorities;

To assess the resource base of the country and allocate resources,

To apprise from time to time the progress achieved and make recommendations to the National Assembly

35 His Majesty the King chaired the Planning Commission from 1972 to 1991. During these two decades Bhutan went through a sea of positive changes, making progress in every field. The economy grew at a fast pace and the standard of living in rural areas rose rapidly. An effective network of service facilities and infrastructure was established.

36 In 1991, His Majesty the King relinquished the chairmanship of the Planning Commission to decentralize the decision-making process. The Minister of the Planning Commission was appointed Chairman and the Commission was reconstituted to broaden the decision-making base. In August 1998, along with the changes mentioned above, the new Minister of Finance was appointed as Chairman of the Planning Commission.

37 A Technical Committee consisting of heads of departments and other technical personnel from various departments was created to assist the Planning Commission. The formation of the Technical Committee has brought professional expertise to facilitate in-depth discussions on development issues.

38 The mechanism for day-to-day linkage and consultation between the Secretariat of the Planning Commission and other ministries and agencies is provided by the Policy and Planning Divisions (PPDs) of the various ministries. The PPDs were established to formulate integrated policies and programmes for the line agencies and to act as the focal point for communication between the Planning Commission and other Ministries. The reconstitution of the Planning Commission and the creation of the Technical Committee and Policy and Planning Divisions were aimed at ensuring wider representation in the decision-making process in government.

6. District Development Committees (Dzongkhag Yargay Tshogchungs)

39 The King, His Majesty Jigme Singye Wangchuck, decentralized the administration and established District Development Committees (DYTs) in 1981 in all the 20 districts of the kingdom in order to bring about greater participation of the people in nation building activities. The King has repeatedly stressed that the future destiny of Bhutan lies in the hands of the people and whatever administrative system is established must receive the full and active cooperation and support of the people in order to become effective and lasting. The King has repeatedly exhorted the people to shoulder their responsibilities as loyal and dedicated citizens who are willing to place the interests of the nation before their own.

40 Today there are about 570 elected members in 20 DYTs. The DYT is chaired by the Dzongda (district administrator) and membership comprises all chimis (National Assembly members) of the district, gups (village headman) and members elected by the people in the village blocks to represent them in the DYT. The thrimpon (district judge) and the sectoral heads of the district and observers.

41. The DYT holds quarterly meetings but can also meet more frequently if required. It discusses development as well as policy matters. All points to be forwarded by the people of the district to the National Assembly are discussed and finalized by the DYT. Proposals for development activities for the benefit of the people during the Five Year Plans are also discussed and finalized by the DYT. The DYT ensures that development priorities requested by the local people are clearly reflected through decision-making during annual meetings and that plans are implemented effectively, with consistent follow-up evaluation ensuring that the people's requests and needs are met.

42. In order to enhance the capabilities of dzongkhag staff, gups and chimis, the Government, in partnership with several development partners, has provided training opportunities to further develop their skills. These training programmes target the enhancement of improved communication and community participation skills, as well as planning and monitoring and evaluation skills.

7. Block Development Committees (Geog Yargay Tshogchungs)

43. To promote further decentralization, Geog Yargay Tshogchungs (GYT) were instituted in every geog (block of villages) in 1991. The establishment of the GYTs was initiated by His Majesty to provide additional institutional bodies to enable the people at the grass-roots level to participate in decision-making and nation building.

44. Today there are 2,606 elected members in 202 GYTs. The GYT comprises members elected from among the people of the villages in the geog. Its strength is determined by the size and population of the geog. It is chaired by the gup (village headman) and the membership includes mangi-aps (village elders) and chipons (village coordinators). The local primary school head teacher functions as the secretary of the GYT, while the local development officials are observers. As he represents them at the national level, the chimi (National Assembly member) is only an observer. The GYT meets once in three months or as required.

45. The responsibility and powers of the GYT cover social and political functions, religious and cultural affairs, development planning and implementation, and safeguarding of the security and sovereignty of the nation.

46. As it is both impractical and inefficient for every household to work directly with the gup on a day-to-day basis, the mangi-aps and chipons represent the village and act on their behalf. Geog zomdus (block meetings/gatherings) are, however, called from time to time by the gup and these are attended by the representative of every household in the geog. Participation at these meetings is active and it has been estimated that there is 70 per cent female participation at the zomdus where the needs of the children are understood and addressed.

8. Royal Civil Service Commission

47. In order to set up an administration that is small, dynamic, dedicated and effective, and responsive not only to the needs of the people but also capable of meeting the challenges of development and nation building, the King established the Royal Civil Service Commission (RCSC) in 1982. It is responsible for formulating and ensuring implementation of

personnel policies in order to promote efficiency, loyalty and integrity among civil servants and to maintain a high level of morale. It is also responsible for appointments, transfers, promotions and discipline of all civil servants. It plays an important role in identifying and addressing emerging issues and changing needs of the civil service while at the same time promoting human resource development and skill transference through capacity building and training arranged both within and outside of the country. In addition, the RCSC is taking a proactive role in helping to identify and promote new vocational areas and sector services which have been identified as necessary to meet the emerging needs of the general public, as well as to address the forecasted supply of well-educated young people who will soon be needing gainful employment.

9. Monk Body (Dratsang)

48. An institution which does not form part of the political structure of the kingdom but has an important social and cultural role to play in the life of the nation is the Monk Body. Shabdrung Ngawang Namgyel (1594-1651 A.D.) established the first Monk Body. It is headed by His Holiness the Je Khenpo (spiritual head), who is equivalent in status to the King. He is assisted by four Lopons who are equivalent in rank to ministers. Although Buddhism is the State religion, there is complete religious freedom in Bhutan. However, open proselytization by any religion and criticisms of other religions are not permitted in the country, with a view to maintaining social harmony.

49. The monastic schools and Dratsangs have great influence on the society. People have faith in what the monks, lay practitioners and traditional healers say and do. Therefore, in order to take advantage of this channel to promote health, sanitation and nutrition among the people in Bhutan, a project has been under implementation for the last few years which aims at improving the drinking water supply, sanitation facilities and hygiene for the religious institutions. Monks have also received training in these areas and they are now actively involved in providing advice and guidance to the people.

III. GENERAL LEGAL FRAMEWORK WITHIN WHICH HUMAN RIGHTS ARE PROTECTED

50. Bhutan is a developing country which initiated the process of planned development only in 1961 after centuries of self-imposed isolation from the outside world. Before 1961, there were no motorable roads, telephones, schools, hospitals, electricity, or other amenities of a modern State. Bhutan followed the policy of isolation in order to prevent its colonization by the colonial powers of the time, and while it was successful in preserving its cultural identity and political independence, it was left behind in the race for social and economic development. However, the laws of the land based on Buddhist principles have always proved conducive to the protection of human rights.

51. Human rights instruments are made part of the legal system when they are formally enacted by the National Assembly. The provisions of the various human rights instruments cannot be invoked before, or directly enforced by the courts unless they have been enacted by the National Assembly. However, as mentioned earlier, the Bhutanese judicial system has been

enriched by the adoption of many principles and procedures of Western jurisprudence, especially with regard to criminal justice. The system is still evolving to meet the challenges of the present and changing needs of a developing country.

52. A fundamental principle of Bhutanese law is that all persons, irrespective of status are equal before the law. The human rights of the people are protected by a three-tier judicial set-up consisting of the High Court, which has both appellate and original jurisdictions, and the District and the Sub-District Courts.

53. The gup, chimi and the barmi are competent authorities at the local level who have jurisdiction affecting human rights.

54. The aggrieved party, if dissatisfied with a verdict, can have the case forwarded from the local level up to the Thrimkhang Gongma. If still dissatisfied with the judgement of the Thrimkhang Gongma, the person can petition His Majesty the King, who then refers the case to the Royal Advisory Council for joint review with the High Court. The power to commute sentences and grant pardon in accordance with the law is vested in the King. Every Bhutanese citizen has this inalienable right of appealing to the King and, occasionally, has recourse to such a measure.

55. The judiciary was separated from the executive and legislative branches of government in 1968 when the High Court was established. Later, a special judicial cadre, distinct from the civil service cadre, was also established to safeguard the independence of the judiciary. Specific provisions have been made in the law to prevent the executive from interfering with the judiciary (section AH of the Thrimzhung Chhenpo).

56. While no specific institution may exist at the present moment for overseeing the implementation of human rights, the national machinery for such responsibilities are the National Assembly, the judiciary and the Royal Advisory Council. The Royal Civil Service Commission looks after the rights of the civil servants, while the Ministry of Health and Education is directly responsible for implementation of services and programmes which meet the needs and health/education rights of both adults and children. Various bodies like the Bhutan Chamber of Commerce and Industry, which helps and supports the private sector, and the National Women's Association of Bhutan, which helps improve the quality of life of women, augment the above institutions in the protection of human rights.

57. The Monk Body, as mentioned earlier, has a vital role to play in the social and cultural life of the nation and enjoys considerable respect and influence as the Bhutanese people are deeply religious. It plays an important part in the propagation of human rights, especially such rights as are a basic component of Buddhism.

58. The Government fully subscribes to the ideal of human rights and its cherished desire is to ensure the enjoyment of the full range of human rights by its people, including the basic human rights to food, clothing, shelter, education and health care. Gross National Happiness is the true essence of development in the Bhutanese context and, as such, the Government is fully

committed to ensuring the overall well-being of every individual. However, as Bhutan is a small developing country with limited resources, the Government realizes that the situation of human rights in the country is not perfect.

59. As a demonstration of her commitment to the promotion of human rights, Bhutan has invited a number of international human rights organizations to visit the country. These include the United Nations High Commissioner for Human Rights, the Working Group on Arbitrary Detention, the International Committee of the Red Cross (ICRC), and Amnesty International. The Royal Government has implemented most of the recommendations made by such missions, a point which was noted by the Working Group on Arbitrary Detention during its follow-up visit to Bhutan in May 1996.

60. Following the visit to Bhutan in July 1994 by Mr. José Ayala Lasso, the United Nations High Commissioner for Human Rights, the Centre for Human Rights (now renamed Office of the United Nations High Commissioner for Human Rights) and the Royal Government concluded a technical assistance project in 1996. Under this project, Bhutanese officials have received training on human rights reporting. Seminars and training have been held for High Court and district court judges, paralegals and law enforcement officials on human rights and the administration of justice.

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